

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

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STATE OF MARYLAND :
:
 v. :
:
ABE ARJUN MALLIK, :
:
 Defendant. :
:
-----X

Criminal No. 10-K-16-059271

JURY TRIAL

Frederick, Maryland

May 30, 2017

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May 30, 2017

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE MICHAEL M. GALLOWAY, JUDGE

APPEARANCES:

FOR THE STATE:

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FOR THE DEFENDANT:

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P R O C E E D I N G S

THE BAILIFF: All rise. The Circuit Court for Frederick County is now in session, the Honorable Michael M. Galloway presiding.

THE COURT: Good morning. Be seated, please.

MS. KING: Good morning, Your Honor. Joyce King on behalf of the State. If I may call State of Maryland versus Abe Mallik, that's 16-059271.

MS. CHOI: Good morning, Your Honor, and may it please the Court, Sun Choi on behalf of defendant, Abe Mallik, who is standing to my left.

THE COURT: Good morning. We are here today, there are some motions to be heard and ruled on and there are -- there is a motion to suppress. I believe we're scheduled to pick a jury beginning at 1:00 p.m. and the trial I've been advised will probably take three days, perhaps less, depending on the Court's ruling on certain motions.

Madam State, you have some motions you wish to bring to the Court?

MS. KING: Yes, Your Honor, starting with the State's motion to amend the criminal information, Your Honor. I don't know if Your Honor has a copy of the actual motion in the court file, just so Your Honor can see the case law that the State refers to. And that was filed on May 17th. And I can approach with a copy for Your Honor.

1 THE COURT: Yes, I'm not seeing it. It may be in
2 here, but -- thank you.

3 MS. CHOI: Your Honor, for Your Honor's convenience,
4 I actually have the opposition -- so should I --

5 THE COURT: I'm sorry?

6 MS. CHOI: I have the opposition motion as well, so
7 you might want to have that as well?

8 THE COURT: Okay.

9 MS. CHOI: If I may approach? And just for the
10 record, I'll do this in open court that the defendant is
11 offering its defense opposition to the State's motion to
12 exclude defense expert.

13 MS. KING: Your Honor, as to the motion to amend, I
14 believe that pursuant to Rule 4-204, the Court can at any time
15 before a verdict permit an amendment to the charging document
16 if the amendment does not change the character of the offense,
17 and that is I believe the case law is well established that a
18 change to date is as to form and not substance. Changing the
19 date does not change the character of the offense. In Manuel
20 v. State, if the same crime is charged after the amendment,
21 it's established that that does not change the character of the
22 offense. In this case, Your Honor, the State is amending the
23 three counts, Count 9 to April 14th, Count 10 to April 12th and
24 Count 11 as to March 30th. They were -- it was a clerical
25 error that it stated March 3rd. We believe that that change is

1 absolutely to form and not substance. The purpose of the
2 criminal information, Your Honor, is to provide notice of the
3 accused as to the nature of the crime and that is absolutely
4 what has been done in this case. There has been adequate
5 notice to the defendant that he's been charged with possession
6 of child pornography. That has not changed after this
7 amendment.

8 Furthermore, I did read and I will have an
9 opportunity to respond after counsel states her opposition, but
10 in anticipation of that, the defense has not changed. The
11 defendant stated his defense from before the charging document
12 even went out, which was that he was hacked. This does not
13 unduly prejudice or there's no unfair surprise. His defense is
14 still that he was hacked. Therefore, Your Honor, the State
15 does believe that both the rule and the case law is clear here
16 in Maryland that a change to date is form. The cases that the
17 State cites in those cases, dates were changed in theft
18 schemes, dates were changed in abuse of minors -- sex abuse of
19 minors. So felony charges, the dates were permitted to be
20 changed even during trial, let alone when the State did request
21 this prior to trial.

22 THE COURT: Madam State, in Count 9, what was the
23 dates --

24 MS. KING: They were all March 3, Your Honor, March
25 3, 2016.

1 THE COURT: March 30th?

2 MS. KING: 3rd. They were all March 3rd.

3 THE COURT: 3rd?

4 MS. KING: Yes.

5 THE COURT: Okay. All right. And the correct date
6 for 9 is April 14th, for Count 10, it's April 12th, and for
7 Count 11, March 30th?

8 MS. KING: Yes, Your Honor.

9 THE COURT: All right, Ms. Choi?

10 MS. CHOI: Thank you, Your Honor. Your Honor, the
11 defense adamantly opposes the amendment that the State is
12 requesting. Pursuant to Maryland Rule 4-204 governing the
13 amendment of charging documents, it is absolutely clear that
14 that is to prevent unfair surprises to defendant and counsel.
15 And if the State's proposed amendment is actually changed, it
16 will substantively change not only the defense theory, but
17 essentially every single thing that happened after that fact.
18 The defendant does not consent in any way. It has been
19 prejudicial to even have the amendment be filed because as of
20 May 17, 2017, the defense was ready. The strategy had already
21 been provided to the State since May of 2016 when Mr. Mallik
22 gave a voluntary interview without charges being formally
23 brought to him.

24 So from day one, he has maintained his innocence.
25 With the amendment of these dates, Your Honor, it actually

1 provides the State a very nice fit. Because on March 3rd, Your
2 Honor, of 2016, the three counts that involve the alleged child
3 porn images were found on Mr. Mallik's Acer personal laptop.
4 He didn't own the Acer laptop until March 21st. That was the
5 receipt that was seized from the search and seizure that the
6 law enforcement took. They had that information since April
7 21, 2016 that Mr. Mallik did not own that computer where those
8 images were allegedly located.

9 Now, the charges are 11 counts. Eleven counts of
10 knowingly possess -- not just possession. We're not talking
11 about a drug case. We're talking about knowingly possess.
12 Because of that language, it absolutely changes the substance
13 of the nature of the events. The defense trajectory has to go
14 a completely opposite direction. Now, that Acer laptop is
15 available to Mr. Mallik's 14 year old daughter. She has access
16 to it. And pursuant to some of the police report, it appears
17 that some of the images may have been from a Google account, a
18 storage in the cloud. Mr. Mallik doesn't have that. So had we
19 known that the specific dates of April 14, April 12, and March
20 30 would be used, then we would have had a different way to go,
21 to figure out what the answers were.

22 But because we knew Mr. Mallik did not have that PC
23 where the alleged child porn was found on that date, March 3rd,
24 and in fact during the voluntary interview, I asked Detective
25 Elrod, who was the lead detective in this case, has the dates

1 of the events changed in any way? And I quoted that in our
2 opposition. He said no, those are the dates that are involved.
3 Nothing else. That has not ever changed, Your Honor, until May
4 17, 2017.

5 So Your Honor, my opposition to this is not only does
6 it add 15 more years to Mr. Mallik's possible incarceration
7 time, because if the dates are actually granted, the changes,
8 it would allow the jury to possibly find that Mr. Mallik owned
9 the Acer laptop at that time, potentially may have had child
10 porn images, and may have knowingly possessed that. But on its
11 face now, Your Honor, on March 3, on those three counts, he
12 didn't own the PC where the images were found. And out of the
13 27 devices, storage thumb drives, every single thing that was
14 tested, this was the one computer that had the images of Counts
15 9, 10 and 11. All of the other counts were pursuant to an e-
16 mail attachment.

17 The State can absolutely pursue that. That's not
18 what we're fighting about. We're fighting about the fact that
19 if that date had been corrected way in advance, it would have
20 absolutely allowed Mr. Mallik to figure out the defense and
21 figure out the questions and answer those questions. But now,
22 at the eve of trial, granting that is going to really change
23 not just the character, but the substance that the defense
24 strategy involved. And that's, Your Honor, absolutely
25 prejudicial to this man, who has never been charged, who has

1 never been convicted of any crimes.

2 And as a result of that, Your Honor, he can't
3 consent. Pursuant to the rule, there is also case law that
4 says if there are critical errors, if it adds additional
5 potential jail time, then it does change the nature of the case
6 and the character of a case. And as a result, Your Honor, we
7 do not agree that this is an amendment that should be granted.
8 Mr. Mallik has maintained his innocence from day one. He has
9 provided ample information that his router was defective, that
10 he had a whistle-blowing incident back in 2014 for which he had
11 a lot of problems. Fast forward into 2016 when all of this
12 happened. He filed a formal complaint against a supervisor,
13 and the day after, his internet connection was incredibly slow.
14 He called Comcast and we actually received exculpatory evidence
15 from Comcast supporting Mr. Mallik's position that in fact he
16 did call before these images were ever uploaded, that there
17 were some internet connection problems and connectivity issues.
18 And so Comcast worked with him and actually sent him to
19 technical support, and it just turned out that this defective
20 router completely crashed at some point.

21 And the reason why that is significant, Your Honor,
22 is that's pursuant to a defense. Mr. Mallik never, ever
23 possessed child porn, let alone knowingly, and we have
24 legitimate defense in terms of ample evidence not only from the
25 State's documents that they provided to us, but from Mr. Mallik

1 himself who is going to testify. And essentially, Your Honor,
2 there's no way that if these dates will be granted, it means
3 that it fits very nicely into the date after the Acer was
4 purchased. Part of our defense was that Mr. Mallik cleaned up
5 the malware where he saw 200 plus unwanted programs on this
6 brand new Acer laptop for some reason within five days, three
7 or four days of purchase -- he found 200 plus unwanted programs
8 on a brand new Acer, for which they have a receipt. So they
9 know that it's brand new.

10 And all of a sudden, after he wipes that clean with
11 the malware software that he purchased and we turned it over to
12 them, that date was March 26th. They now conveniently want to
13 use the dates March 30, April 12 and April 14. Because by
14 April 21st, the raid occurred and the law enforcement seized
15 that device. So they had a certain window of time, Your Honor,
16 in which those three counts where those alleged images are
17 knowingly possessed by Mr. Mallik has to be after March 21st
18 when he owned it, after March 26th, when he wiped out the
19 malware, to dispute the hacking theory that the defense had
20 already provided it and before April 21st.

21 So those counts, Your Honor, March 30, April 12th,
22 April 14th -- fits very nicely into that little spot where he
23 could potentially be found by a jury and have an additional 15
24 years -- on each count, five years, plus a \$2,500 fine when the
25 State has already got other counts that has nothing to do with

1 the PC and can go forward.

2 So yes, Your Honor, this is not just a simple
3 clerical error. This has completely turned one defense into a
4 trajectory which we didn't consider at all because at that
5 point, he didn't own the PC. And it's that simple. He just
6 didn't own it. And yes, there's reasonable doubt there. So
7 Your Honor, based on the facts of the case, and the fact that
8 Mr. Mallik provided all of this defense strategy before he was
9 even charged, before he even had the benefit of discovery --
10 because there were no formal charges -- we adamantly oppose any
11 amendment to those dates.

12 The State can go forward on the other counts, Your
13 Honor, and we're prepared to go forward on those.

14 MS. KING: If I may reply, Your Honor?

15 THE COURT: Ms. King?

16 MS. KING: And Your Honor, Ms. Choi again states very
17 beautifully the defense theory, which they have been stating
18 since the very beginning, which hasn't changed. And Your
19 Honor, Ms. Choi did not address that the case law is clear
20 that -- and this is a direct quote from Manuel v. State -- if
21 the same crime is charged after the amendment, the offense's
22 character has not been changed. That was in Manuel v. State.
23 In Guyant v. State (phonetic sp.), in Thompson v. State, this
24 is well-established law in Maryland. And even though he may
25 face additional penalties because there are still additional

1 charges, of course, that -- they're not new charges. There's
2 charges that still exist. The penalties haven't changed. And
3 in addition to that, Your Honor, there has been no undue
4 surprise. The defense had reviewed these images, had access to
5 the forensic file since December 13, 2016. That's when the
6 State gave the opportunity to view these CP images. That's
7 when the examination, the preliminary examination had been
8 conducted and completed. And Ms. Choi and I met at the State's
9 Attorney's Office and she had access to this file. There's no
10 undue surprise.

11 And Your Honor, I believe that the State's motion
12 should be granted to amend these counts. And the State is
13 ready to go forward.

14 And alternatively, Your Honor, if these counts are
15 dismissed, the State can dismiss all counts and recharge. And
16 we'd be back here. The state is ready to go forward today.
17 We're trying to give the defendant a speedy trial. And we're
18 ready to go forward.

19 MS. CHOI: Your Honor, at that point, then we would
20 prefer that the State dismiss the entire charge. Because then
21 it would give us a little bit more time. With regard to the
22 viewing and the accessibility of the files, Your Honor, that
23 was -- yes, I met with Ms. King back in December. And I was
24 given snippets of those images and the path files. And that
25 was it, Your Honor. I didn't get a copy of it.

1 MS. KING: We can't provide copies.

2 MS. CHOI: And I wouldn't want those copies anyway --
3 and so Your Honor, so knowing what I knew back then, when he
4 was actually charged November 2nd, and then I met with Ms.
5 King, because I was doing my due diligence, doing whatever I
6 can to try to prove Mr. Mallik's innocence, I went and saw
7 these images and the criminal information wasn't filed until
8 December 2nd.

9 So this all happened very close in time, Your Honor,
10 and I never actually physically had that possession of those
11 images or the path files or where they actually originated
12 from. And so Your Honor, the expert report was not provided
13 until months after that. Months after that. And then on top
14 of that, the expert's report then was updated May 18, 2017.
15 Weeks ago. So throughout this entire time, from the start of
16 the case up until now, there has been continuous delays. I'm
17 not saying that it's Ms. King's part. The police report is
18 telling me exactly who got delayed. It was the retirement of
19 the lead detective. Then it was picked up by Detective Snyder.
20 Months when by when nothing happened. The very first time that
21 Mr. Mallik knew sort of what was going on was during the raid
22 on April 21st. It wasn't until November 2nd because I prompted
23 the detective into finding out what is the conclusion of the
24 investigation? He has voluntarily provided everything that you
25 wanted. He even gave you the defective router, which Detective

1 Elrod refused to take. I mean, that was a dead router. He has
2 receipts of a new router. This is the defense. This is what's
3 going on. There is somebody in his employment who is out to
4 grind his ax and he wants his pound of flesh. And he knows
5 exactly where Mr. Mallik works. He telecommutes from home as
6 well as go into FTF.

7 So everything about him is known to his employer who
8 is grinding his ax because back in 2014, he won \$51,000 because
9 there was racial discrimination. And since that time, it's
10 never been the same, Your Honor. He is a whistleblower. We
11 might not like him for doing that, but he had the right to do
12 it. And because of that, he has been prejudiced and has been a
13 victim at his employment. Now, there's a motive there. Not
14 only is there a motive there, there's an opportunity because
15 everything that he did -- and our expert will testify to
16 that -- who is here free of charge, he's just a neighbor --
17 would say that really indicates somebody who has been hacked.
18 That has been our defense from day one, Your Honor. From day
19 one.

20 And so I absolutely disagree, respectfully, with the
21 State, that it does change everything about this case, Your
22 Honor. It took us to a different trajectory. Had I known that
23 that's what the State was going to use in terms of those three
24 counts, oh, I would have absolutely interviewed every -- I
25 would have gotten his daughter and provided that information --

1 everything voluntarily. Because I wanted the State to know
2 that this is where we were coming from. And none of that
3 investigation actually took place.

4 Mr. Mallik's position was never investigated until
5 late April, maybe early May. They then followed up with
6 Comcast to see if he actually made the service calls back in
7 February. They then followed up with a potential other person
8 who might have a motive against Mr. Mallik. This was all done
9 very -- it was very delayed. It was very last minute. And as
10 a result, there was a request for a continuance. All that
11 happened, Your Honor, that happened in this case.

12 As a result, he has suffered. And if the State wants
13 to nolle pros the entire case, then so be it. And let them
14 recharge. But at least that gives me enough time to
15 investigate that defense. Because at this point, it is unfair
16 surprise. And I want to keep calm and let Your Honor know I
17 can do whatever I can to make this work, but that was the key
18 to the defense, Your Honor. That is a crucial element. And
19 it's not just a clerical mistake or an error. It's his life.
20 It's his liberty at stake. And I need more time for
21 investigation.

22 THE COURT: Let me ask Ms. King a question. When did
23 the State discover the discrepancy in the date?

24 MS. KING: As soon as we filed the motion, Your
25 Honor.

1 THE COURT: No, no, you discovered it --

2 MS. KING: On the date that I filed that motion was
3 when we discovered it.

4 THE COURT: And how was it that it was discovered?

5 MS. KING: I came back from maternity leave and I
6 began reviewing this case, preparing for trial, because the
7 State's postponement was denied. That's how I discovered it,
8 Your Honor. And Your Honor, I mean, the case law is clear
9 that -- Your Honor, I cite four specific cases that
10 specifically say the changing of a date and offense is
11 considered a matter of form and not substance.

12 THE COURT: I'm familiar with all that.

13 MS. KING: Exactly, Your Honor.

14 THE COURT: But I also -- I mean, I think I have an
15 obligation to hear Ms. Choi, and you know, based upon her
16 arguments, I just want to make sure before I rule -- so this
17 change was discovered late in the game as you're saying the
18 State acted in good faith, didn't sit on this after --

19 MS. KING: No, I actually called her before I filed
20 the motion to notify her that I would be filing it.

21 THE COURT: All right, I'm going to grant the State's
22 motion. I believe that it is a clerical error. Ms. Choi, I
23 hear you. A lot of what you say is based upon facts in the
24 form of proffers. And I think it's really difficult for me
25 to -- I started out with the notion that when we're talking

1 about a date that it is probably a clerical matter. And I
2 don't think at this juncture that I'm inclined to deviate from
3 my usual practice, which is in a case like this to grant a
4 motion to amend the charge based upon a discrepancy with the
5 date.

6 Now, if we were talking about, you know, a date that
7 was alleged and there were years in between the dates, that
8 might be something different. But in this particular case, I
9 believe that there's no indication the State is not acting in
10 good faith and I believe it is a matter of form, not substance.
11 So I will grant the State's motion to amend.

12 MS. KING: Thank you, Your Honor.

13 MS. CHOI: Your Honor, would Your Honor reconsider
14 that decision once you have heard some evidence with regard
15 to --

16 THE COURT: You want to renew the motion at some
17 point?

18 MS. CHOI: Right.

19 MS. KING: Your Honor --

20 MS. CHOI: Because Your Honor stated that it was just
21 based on proffer. So after evidence has been provided maybe to
22 the detectives that are involved in the case, and when they
23 would have found the date, I think that that would change the
24 character --

25 THE COURT: Well, I will reserve on your request to

1 renew the motion. Make your motion when you think it's
2 appropriate and I'll rule on it at that time.

3 MS. CHOI: Thank you, Your Honor.

4 MS. KING: Your Honor, the State's second motion --
5 the State filed a motion to exclude the defense expert witness
6 based on failure to set forth the criteria in 5-702. Does Your
7 Honor want a copy of that?

8 THE COURT: Please.

9 MS. KING: And I'll bring up counsel's opposition.

10 MS. CHOI: Thank you.

11 MS. KING: Does Your Honor want a minute to review
12 that?

13 THE COURT: No, you can go ahead.

14 MS. KING: Thank you, Your Honor. Your Honor, it's
15 established in Rule 5-702 that there are three prongs at which
16 an expert testimony should be admitted -- whether the witness
17 is qualified by knowledge, skill experience; number two, the
18 appropriateness of the testimony as well as three, whether
19 there is a sufficient factual basis existing to support that
20 expert testimony.

21 The State filed this motion because based on our
22 review of the expert's opinion, there is no factual basis. The
23 Courts have held that there needs to be -- that expert
24 testimony cannot just be based on conjecture or incompetent
25 evidence. And that's what we believe is here. In the State's

1 motion, we cited specific quotations as to what Mr. Johnson was
2 basing his conclusion on. He states under the hacking Mallik
3 portion of his report as well as the conclusion portion of his
4 report that he believes that the hacker had made access with
5 the presence of malware as well as the use of an RAT, which is
6 a remote access Trojan and also includes a key logger. There
7 is absolutely no evidence that any of those things were
8 present. Actually, there's evidence that they were not
9 present. And most fundamentally, Your Honor, the expert in
10 this case has not reviewed any forensic evidence, which is
11 highly unusual for an expert to be proffering some opinion
12 without examining the actual evidence.

13 It would be likened to a DNA expert not looking at a
14 DNA report or an autopsy expert not looking at an autopsy
15 report. Or a crash expert not looking at the evidence of the
16 crash. The nature of child pornography is that no, we cannot
17 provide a copy of the hard drive or a printout of the images.
18 But the hard drive is made available to the defense, to any of
19 their expert witnesses -- they have the ability to request an
20 EO1 file, an evidence file. They have the ability to go and
21 meet with the forensic examiner and examine the evidence. And
22 that wasn't done in this case.

23 So absolutely this is just based on conjecture. And
24 what we have here is the defense bootstrapping the defendant's
25 statements with an expert. As you see in the expert's report,

1 he bases his opinion on the self-reporting of the defendant.
2 And case law holds that you cannot -- an expert cannot give an
3 opinion and interject facts that are necessary to form that
4 opinion. They need to be established by some factual basis.
5 And Your Honor, the State would contend that in this instance,
6 there is no factual basis for the opinion.

7 THE COURT: Ms. Choi?

8 MS. CHOI: Thank you, Your Honor. Your Honor,
9 pursuant to Maryland Rules of Procedure 5-702, 5-703, and the
10 relevant case law, this person, Your Honor, Mark Johnson, is
11 actually in the courtroom. And with regard to what the State's
12 position is, Mr. Johnson not only reviewed most of the State's
13 discovery, but he also had the extra additional set of facts
14 and actually spoke to Mr. Malik with regard to what happened
15 and what behaviors led to his conclusions. The factual
16 substance that supported the opinion at the end and in the
17 defense opposition, Paragraph No. 3, I wrote, the State does
18 not dispute that Mr. Johnson formed his opinion based on the
19 information with which he was provided at that time, which can
20 support a sufficient factual basis, even without a direct
21 forensic examination of the devices at issue. That's the
22 State's motion, Your Honor.

23 Not only did he see the State's forensic examination
24 results, he also received the State's supplemental results back
25 on May 18, 2017. Not only did he see all of that and review

1 all of that, he received the mountains of documents, close to
2 2,000 pages, and reviewed that information on top of
3 interviewing Mr. Mallik.

4 So Your Honor, with regard to Ms. King's position,
5 the State's position, it is entirely incorrect. He has the
6 factual basis. He has the knowledge. He has 20 years of
7 experience with regard to cyber security, with regard to
8 hacking, with regard to router deficiencies and
9 vulnerabilities. Mr. Mallik doesn't have the capacity to
10 explain all of that to a jury, Your Honor. The key purpose of
11 this expert is to help the jury understand those material
12 issues and facts. And that's what he's here for. He has
13 never, ever testified in court. He is doing this as a
14 neighbor, as somebody who is not being paid, but somebody
15 because he has an expertise in this field.

16 And when Mr. Mallik started talking to his neighbor
17 about what happened to him, he knew right away exactly what was
18 going on, and hence the substance and the foundation for his
19 report. Your Honor, he is here -- we can certainly ask -- at
20 the State's request -- he is here and he can testify under oath
21 all of the information that he was provided with. And we can
22 qualify him as an expert at this time because he is that
23 credentialed. He has 20 years of not just educational
24 experience, but the know-how. He is the person that the
25 federal government goes to for the expertise that he is in the

1 field of cyber security and hacking and router vulnerabilities.
2 He's the one that showed us that Acer, the router that Mr.
3 Mallik had, was involved in a \$206 million lawsuit settlement
4 right around the time that Mr. Mallik owned that router. So
5 clearly, he's going to be able to help a jury understand
6 exactly what happened in terms of the defense theory because
7 that's what happened. Every single thing that Mr. Mallik did
8 is going to be explained by Mr. Johnson as to what that
9 actually means. And that's why he's here, Your Honor.

10 I would, at this time, if Your Honor would indulge
11 Mr. Johnson to take the stand and we can certainly ask him
12 these questions under oath with regard to what it is that he
13 reviewed, what his qualifications are, and whether he would be
14 a defense expert and qualified to testify on the defense's
15 behalf.

16 THE COURT: Ms. King?

17 MS. KING: Your Honor, I'd submit on argument. I'll
18 save my questions for Mr. Johnson for cross-examination if Your
19 Honor is inclined to admit him.

20 THE COURT: All right. Well, we will reserve on
21 admitting him, but I'm not going to exclude him. If it becomes
22 apparent when the State has an opportunity to voir dire the
23 witness when he testifies that the State's position is correct,
24 then I can decline to admit him as an expert at that time. But
25 based upon what I've heard -- I mean, I think the fundamental

1 definition of an expert really is someone who can assist the
2 Court, the jury, who has the requisite knowledge and experience
3 to help the Court and the jury understand and apply the law to
4 certain facts. So I'll deny the State's motion.

5 MS. KING: Thank you, Your Honor. We'll reserve on
6 that, and as you stated, when the time comes, the State would
7 like the opportunity to voir dire him.

8 MS. CHOI: Your Honor, may I allow Mr. Johnson to be
9 excused at this time?

10 THE COURT: Yes.

11 (Discussion off the record.)

12 MS. CHOI: Thank you, Your Honor.

13 MS. KING: Your Honor, there are two further State
14 motions in limine. The first motion, Your Honor, is the State
15 filed a motion to exclude the defendant's statements. The
16 State will not be using defendant's statement to Cpl. Romril as
17 well as the defendant's interview in its case in chief. And
18 again, the rules are very clear, pursuant to 5-803 that these
19 are hearsay and only admissible by the party opponent. I'd
20 like to -- counsel provided a transcript of the defendant's
21 interview. I inquired how she intended to use that in trial.
22 She stated through her own client. Pursuant to the rules,
23 that's not admissible.

24 THE COURT: Ms. Choi?

25 MS. CHOI: Your Honor, as a follow up to that, I did

1 also provide to Ms. King the transcript showing the certificate
2 of transcription of that interview. And at this time, the
3 purpose of that interview is not essentially to show everything
4 that's true in there, but the fact that it happened on that
5 particular date. And so it actually is for non-hearsay
6 purposes.

7 THE COURT: I'm sorry, for what purposes?

8 MS. CHOI: Non-hearsay purposes at this time. It was
9 a voluntary interview that Mr. Mallik provided at the time, May
10 17, 2016, and essentially he was telling Detective Elrod all of
11 the things that went wrong. And that -- well essentially, that
12 was the beginning of the defense theory of exactly what
13 happened to Mr. Mallik. And so through testimony, he'll be
14 able to testify to that. I will refer to that transcript, Your
15 Honor, to refresh his recollection. At this point, it would
16 not be submitted as any kind of evidence in terms of a document
17 that the jury should actually have in their hand.

18 MS. KING: Again, Your Honor, he can state that he
19 had an interview. He cannot state what the contents of that
20 interview was, what he said. The Court does not permit a prior
21 consistent statement.

22 MS. CHOI: But at the same time, Your Honor, I can
23 certainly ask Detective Elrod --

24 THE COURT: Yes, I agree. I agree. Okay. Well,
25 based upon Ms. Choi's representation, I think really the motion

1 is moot. If it's not being offered for the truth, if the
2 statement is not being offered, if it's just simply going to be
3 used in terms of cross-examination, then I don't think it's an
4 issue.

5 MS. KING: The State just wanted to make that clear.
6 Thank you, Your Honor. And there's the final state's motion in
7 limine, Your Honor, to exclude -- defense counsel provided
8 several letters and e-mails. The letters are clearly hearsay.
9 They're not the defendant's statements. They're from other
10 parties who work at the FDA. There's also e-mails that contain
11 double, triple hearsay of him saying what somebody else said
12 and somebody else said. I did read counsel's opposition. I'll
13 actually let Ms. Choi respond to that and then I'll reserve for
14 rebutting it.

15 MS. CHOI: Your Honor, these exhibits will be made
16 pursuant to Maryland Rule 5-803(B)(24), a specific exception to
17 the hearsay rule. The letters that we're talking about, the
18 documents that we're talking about is a May 7, 2014 EEOC
19 complaint inquiry form that Mr. Mallik filed against his
20 employer. This was after the settlement of the lawsuit where
21 the government paid him \$51,000 for racial discrimination. So
22 within months, he started feeling again the problems. And the
23 next document would be July 15, 2014, the acceptance of the
24 EEOC complaint. Then the exhibits that we are seeking to admit
25 at this time, when trial happens, is April 22, 2016 -- it is

1 the letter from his immediate supervisor, the one that he
2 complained against, suspending him the day after the raid. How
3 they found out about it, I'm not sure. I guess the trial will
4 tell us.

5 But the day after the raid of Mr. Mallik's home is
6 when he was suspended. And pursuant to that, Your Honor, it's
7 those letters from December 5, 2016, January 19, 2017, March 1,
8 2017 and March 31, 2017 that all of those letters came from his
9 place of employment with the letterhead from FDA with regard to
10 the documents that we are seeking to admit during trial.

11 So Your Honor, with regard to the specific rule,
12 Maryland 5-803(B)(24), it does provide under exceptional
13 circumstances the following are not excluded by hearsay rule --
14 a statement not specifically covered by any of the hearsay
15 exceptions listed. However, it has -- the statement is offered
16 as evidence of a material fact. The second prong is the
17 statement is more probative on the point for which it is
18 offered than any other evidence which a proponent can procure
19 through reasonable efforts. And the third, the general
20 purposes of these rules and the interests of justice will best
21 be served by the admission of the statement into evidence.

22 The statement may not be admitted under this
23 exception unless the proponent of it makes it know to the
24 adverse party that it is going to be used. We have done that.
25 All of these letters have been provided to the State well in

1 advance -- back in April -- April 3, 2017 to be exact. And
2 with regard to this, Your Honor, the material fact that is
3 going to be proven with regard to these letters is that the
4 letters are being signed by the very person that Mr. Mallik is
5 whistle blowing on. The letter starts the day after the raid
6 actually happens. And how he found out about it, I don't know.
7 Because Mr. Mallik wasn't calling his employer, that person
8 he's reporting to, and saying I just got raided by law
9 enforcement for child pornography. So we don't know what
10 happened there, Your Honor. The entire defense theory is that
11 this person did have an ax to grind. This person did see an
12 opportunity. This person decided to jump on that opportunity
13 and suspend him as soon as it happened, before it was even
14 public knowledge, Your Honor.

15 It was not public news until November when the
16 application for statement of charges was filed by Detective
17 Snyder. So Your Honor, it is a material fact. These letters
18 are indicative of its genuineness. It's letterhead. It is all
19 dated. It is in the format in which we receive official
20 letters. He will testify that it is the exact same copy that
21 he received in terms of the original and that nothing has been
22 altered as a result.

23 So under this rule, Your Honor, under the hearsay
24 exception, it squarely fits into all of those prongs in which
25 it satisfies all of the elements required for this to be

1 genuine and admissible.

2 MS. KING: Your Honor, counsel is trying to get all
3 these letters in under the residual hearsay exception which
4 first off, the declarant has to be unavailable. If Ms. Choi
5 wanted to enter these documents into evidence, she should have
6 called that individual as a witness and had them admitted that
7 way. So this is not an exceptional circumstance by any means.
8 I believe that the case law again is established in Woods v.
9 State that this is of an absolute last resort. I mean, it's
10 not even more probative -- the more probative testimony would
11 be the defendant's own testimony that he filed this suit.
12 These are extrinsic to that. The State maintains that this is
13 absolutely just plain hearsay and does not fall into the
14 exception of the residual hearsay.

15 THE COURT: I'm going to reserve on this. I've got
16 to see how things play out, and then we can discuss it further
17 during the trial.

18 MS. KING: Thank you, Your Honor. And those are the
19 State's motions.

20 THE COURT: Ms. Choi?

21 MS. CHOI: Thank you, Your Honor. Your Honor,
22 Court's indulgence. I have a motion in limine. If I may
23 approach, Your Honor? I did provide a copy to the State. This
24 motion, Your Honor, concerns the data, e-mails and contents of
25 a Gmail account that is involved in the specific charges, some

1 of Detective Snyder's notes with regard to information, and all
2 of the documents, texts and e-mails that may be pornographic --
3 not illegal -- but pornographic in nature related to
4 prostitution and related to escort services.

5 These documents, Your Honor, while they may be
6 probative and have some value, it is substantially outweighed
7 by the fact that there is danger of undue prejudice, confusion
8 of the issues for misleading the jury. As such, pursuant to
9 Maryland Rule 5-403, we're asking that Your Honor not allow
10 these documents as well as the testimony with regard to these
11 documents be allowed because if in fact Mr. Mallik was hacked,
12 and the defense proves that, if the State continues with this
13 line of questioning and the images and shows the jury non-
14 illegal pornographic material, they absolutely can attribute
15 that behavior to Mr. Mallik, despite the fact that we are --
16 the defense has maintained that he has been hacked and that
17 this information was put in his computer, and his account. And
18 that's what the expert would testify to, that his accounts and
19 his device was hacked into.

20 So with regard to the sensitive material, Your
21 Honor -- and when I say sensitive material, I'm talking about
22 actual e-mails and text messages to e-mails that say I want to
23 hire you for sex or I want to meet up with you -- so it's in
24 that nature, Your Honor. None of it actually happened. Nobody
25 can prove that it actually happened. But these are e-mails

1 that are just sitting around in Mr. Mallik's Gmail account, and
2 now the State would potentially be using that, confusing the
3 jury, and having the jury decide well, if you have a propensity
4 to look for prostitutes and escort services, well, you have the
5 propensity to possess, to knowingly possess child pornography.
6 It's a gateway, Your Honor. And these images, although not
7 illegal, would absolutely be prejudicial to the defendant. And
8 so as such, we want to limit that information and have the
9 State focus on exactly what their evidence is and not talk
10 about everything else that is in that account.

11 THE COURT: I understand your argument with regard to
12 1F. But what about the A, B, C, D and E?

13 MS. CHOI: Your Honor, the A, B, C, and D, those
14 are -- that's information that contains very sensitive,
15 sexually related materials.

16 THE COURT: All of them?

17 MS. CHOI: All of them. Actually, we were produced
18 mountains of documents with regard to that. And so yes.

19 THE COURT: Ms. King?

20 MS. KING: Thank you, Your Honor. Your Honor, I'll
21 address Ms. Choi's motions individually. First, as to images
22 that are -- that she qualifies as child erotica or other images
23 of children, that is absolutely relevant and more probative
24 than prejudicial.

25 THE COURT: Okay, and that would be with regard to

1 which one of these --

2 MS. KING: I am unclear as to --

3 MS. CHOI: Your Honor, they're in both sets of the e-
4 mails that I received from the State. It would be B and C.

5 MS. KING: I think that's A, B and C.

6 MS. CHOI: A, B, and C.

7 THE COURT: Now, you're saying --

8 MS. CHOI: They contain images of children.

9 MS. KING: Correct. So there are two sets of --

10 THE COURT: These images?

11 MS. KING: There are two sets of images, Your Honor.

12 First is a set of images located on defendant's laptop where
13 the pornography is located. That is absolutely intrinsic and
14 relevant. That goes to a material fact of knowledge, of
15 intent, of absence of mistake. It goes to that he has a
16 motive, he has a prurient interest in children. It's
17 established in case law related to child pornography that it is
18 one and the same. This is one transaction. It's as if to
19 limit, you would be limiting someone from describing a murder
20 scene where evidence is found. You cannot confine the jury as
21 to what else was located during a forensic examination. This
22 is absolutely relevant and more probative than prejudicial.
23 And it's not eliciting -- the nature of the case is child
24 pornography, which of course is an uncomfortable topic. These
25 images -- I will represent a proffer to the Court that are not

1 more inflammatory than the images of child pornography.
2 They're much less inflammatory. So they go into an essential
3 fact, the fact that the defense is raising.

4 So I believe that under 403, it is absolutely -- it
5 should be admitted. As to the e-mails, there's images located
6 in the emails where the defendant is communicating -- and we're
7 not getting into the communication. And I'll proffer to the
8 Court the State is not intending and will concede as to any e-
9 mails relating to the prostitution. We agree that that's
10 outside the scope of this trial and is not relevant. So we are
11 not going to be trying to admit anything regarding
12 prostitution. However, there are specific e-mails that were
13 provided to the defensive images. Again, images of minor
14 females. And again, that goes to the defendant's prurient
15 interests to young females.

16 THE COURT: It's hard for me to interpret what that
17 means. I mean, first of all, with regard to anything that
18 would be characterized as pornographic but not child
19 pornography, I would grant the defense motion.

20 MS. KING: Right, and the State is not --

21 THE COURT: But it's hard for me to interpret -- for
22 instance, you're saying A, B and C are images of children?

23 MS. KING: Yes, Your Honor. And I can show you the
24 packet, Your Honor.

25 MS. CHOI: Your Honor, if I may, the defense is not

1 opposed pursuant to this motion that the State's witnesses can
2 describe what it generally is. But to actually show the jury
3 the contents of this --

4 MS. KING: Your Honor, this is the packet.

5 THE COURT: You can come on up.

6 MS. CHOI: Your Honor, when I saw that, I was
7 shocked. And I'm a defense attorney. And I was shocked. So I
8 can't even imagine what a jury would feel if they saw these
9 images.

10 MS. KING: Your Honor, this goes absolutely to --
11 they weren't just eight random --

12 THE COURT: All right, let me ask a question. I'm
13 looking at all of these images. And some of them, it may be
14 difficult for me or a jury to determine whether or not a
15 specific picture is a picture of a child. For instance, this
16 one is difficult. Obviously this appears to be a child.

17 MS. KING: And Your Honor, if Your Honor wants to
18 reserve, the State can -- when it's time to call the witness, I
19 can lay the foundation.

20 MS. CHOI: I don't think that's enough, Your Honor.
21 I think that it is unfairly prejudicial, that it does violate
22 403. Just looking at a glance, if the detectives want to talk
23 about the substance of what they found, okay. I can't stop
24 them. However, just to have the jury look through all those
25 pages and then in the search warrant say that child molesters

1 have images of small children --

2 MS. KING: We're not admitting anything in the search
3 warrant --

4 MS. CHOI: But that was part of my stipulation is
5 that I'm going to admit it, because they've already labeled him
6 a child molester, Your Honor, in the search warrant, in the
7 application for the search warrant. It said -- the detective
8 who actually filed it said child molesters keep hoards of
9 photos of young children. And so there's that prejudice, Your
10 Honor. And coupled with all of these images in front of a jury
11 where it's going to take you a good 20 - 30 minutes to go
12 through all of these images, Your Honor. At this point, we
13 would be okay with the detective describing what he found, but
14 definitely not in front of a jury.

15 MS. KING: Your Honor, I think it is absolutely
16 relevant and more probative than prejudicial. This goes as to
17 the issues that the defense is raising as to intent, as to
18 absence of mistake. It's both qualified under 403 and 404 B at
19 this juncture. And there is data also included in this
20 information that's integral to the State's case about accessing
21 these images. And these are contained in the same folders as
22 the child pornography, to prohibit the State from showing the
23 jury where these images were located and what they were located
24 with. It's analogous to a drug case where paraphernalia would
25 be found along with the CDS and you wouldn't be allowed to talk

1 about the paraphernalia.

2 MS. CHOI: Your Honor, if the photographs were all
3 redacted, then fine. But in terms of the photographs being
4 provided with the sub-folder path file, all of that, Your
5 Honor, it does violate 403. We can't sit here and say that
6 doesn't affect how you feel about the defendant. There's no
7 reasonable person that would say well, that doesn't affect how
8 I'm going to decide the evidence of the case. That's part of
9 the evidence. That is unduly prejudicial to him.

10 MS. KING: Your Honor, I can provide the specific
11 case law regarding child pornography cases where this is
12 permitted.

13 MS. CHOI: And it's Your Honor's decision whether or
14 not as a gateway to the evidence that the jury is going to
15 have, is it going to confuse them? Is it going to be a waste
16 of time? Is it going to be prejudicial against the defendant
17 who is fighting for his life, Your Honor?

18 THE COURT: Why don't -- when we finish here, why
19 don't you give my law clerk any cases you want the Court to
20 look at. My initial reaction -- I mean, some of these pictures
21 I would say they portray people that aren't necessarily -- who
22 may be uncertain as to whether they are children. But there
23 are many.

24 MS. KING: Correct, Your Honor, and that's the other
25 reason is that this is called a folder of interest. This is a

1 part of their investigation where they flag not only images of
2 children, but images that are consistently found in the
3 defendant's e-mail, images that are found in the defendant's
4 other computers. So it's not just that they're just images of
5 children, period, but that there is corroborating evidence. So
6 by suppressing this document, you're suppressing integral facts
7 that go to possession.

8 MS. CHOI: There's another way to get that
9 information in, Your Honor, and that's through the detective's
10 testimony that that's what he found, some images. It doesn't
11 have to be those specific images, Your Honor. They are
12 voluminous. And the State's position was, in fact --

13 THE COURT: Well, what I can see myself doing is
14 saying pick out some pictures that are representative without
15 putting them all in.

16 MS. KING: I would stipulate to that. Would you be
17 okay with that?

18 MS. CHOI: I would be okay with that, Your Honor, if
19 there are some photographs -- instead of the entire volume.
20 Because who knows what happened and how it got in there.

21 MS. KING: I would like the images to be
22 representative of the packet, so it would include both the
23 clothed and unclothed images of children.

24 MS. CHOI: Well, I can certainly sit with the State
25 and figure out those images and then come to a conclusion so we

1 can move it along.

2 MS. KING: I think that's a fair conclusion.

3 THE COURT: All right.

4 MS. CHOI: Thank you.

5 THE COURT: All right, for the record, I have
6 reserved on that and asked counsel to provide any relevant case
7 law to my law clerk and also suggested that perhaps the State
8 and the defense agree on some photographs which are
9 representative but not the entire stack of pictures. Now,
10 anything else we need to address?

11 MS. KING: I'll defer to counsel.

12 MS. CHOI: Your Honor, I think we've addressed the
13 documents that would involve any kind of pornography -- child
14 pornography, anything related to prostitution, anything related
15 to escort services -- if that's outside the scope, then we're
16 fine with that, with the Paragraph 1 F.

17 MS. KING: And Your Honor, if I could -- I just want
18 to make sure that we're talking about -- if I could have the
19 Court's indulgence? We might need to approach regarding the e-
20 mails that counsel is referring to. What e-mails specifically
21 are you referring to?

22 MS. CHOI: So Your Honor --

23 MS. KING: Because I know the prostitution and
24 anything regarding prostitution the State will not be intending
25 to introduce during trial.

1 MS. CHOI: Oh, okay. All right. That was mostly
2 what the defense position was, that there are specific e-mails,
3 who knows who sent it, assuming arguendo, which is what I
4 put -- that would confuse a jury and would violate 403, Your
5 Honor. And those e-mails were in his MAM.maryland@gmail.com
6 account. There are e-mails with -- specifically on February
7 18, 2016 that was -- that stated the last message regarding
8 "Indian Wife 1" is from commie@yahoo.com to
9 MAM.maryland@gmail.com on December 18, 2016 stating "32C only
10 when horny or aroused. She like the stuff." And that's kind
11 of the flavor of the e-mails that we find would be in violation
12 of 403.

13 MS. KING: And we would not submit on that, Your
14 Honor. There are e-mails regarding soliciting prostitutes and
15 the State would submit that we would not introduce that into
16 evidence. But as to that specific e-mail entitled "Indian
17 Wife," we do believe that is more probative than prejudicial.
18 The first eight counts of this case is child pornography being
19 e-mailed from one of his e-mail addresses to his secondary e-
20 mail address. What the detectives found was a pattern that
21 when the defendant would like to e-mail himself -- there was a
22 pattern of e-mails being sent from the defendant's one e-mail
23 to another e-mail, and these are one of those e-mails. It was
24 secretive in nature, that this was a pattern that he did,
25 sending one of his e-mails to another one of his e-mails. The

1 defense is that he was hacked. The defense can put that on
2 that this was not him. The State does believe that this is not
3 prejudicial whatsoever.

4 MS. CHOI: Your Honor, I will proffer something that
5 maybe the State doesn't know. I did contact these individuals.

6 THE COURT: I'm sorry, you contacted --

7 MS. CHOI: I did contact these individuals from his
8 e-mail accounts. And I spoke to them. They were actually very
9 nice. They're adults. And they spoke to him -- they had no
10 idea who he was. No idea who he was, his name, his call name,
11 his alias, none of it. And I actually have phone numbers. I'm
12 going to cross-examine Detective Snyder on whether or not he
13 followed up with these individuals. It was so easy for me to
14 find them. And Your Honor, these kinds of e-mails, they do
15 violate 403. When the reasonable person on a jury is going to
16 hear this information and look at this South Asian man, they're
17 going to say, hmm, just maybe he has that propensity. They
18 might confuse the issues involved. And that's what 403 allows
19 us to do, to make sure that the jury isn't confused.

20 MS. KING: And Your Honor, as Ms. Choi just stated,
21 it goes to the weight of the evidence and let the jury decide.
22 She can cross-examine and say that this wasn't him, you know?
23 That this is -- this goes to access and control of that e-mail.

24 THE COURT: Am I correct, we're talking about one
25 specific e-mail?

1 MS. KING: That's the one that she's contesting.

2 MS. CHOI: Right. There are e-mails -- the texts
3 that comes to this man at Gmail.com, so text- messages that
4 come to this e-mail address. And so I contacted these
5 individuals and asked them, do you know this person?

6 THE COURT: But the one e-mail that you quoted, is
7 that the only one that you're contesting?

8 MS. CHOI: No, there are several e-mails, Your Honor.
9 There's quite a bit, actually. There are several e-mails that
10 I believe would be --

11 MS. KING: I think it would be cleaner, Your Honor,
12 if we did this during trial, just because she doesn't know
13 which e-mails I'm trying to admit, and I don't know which e-
14 mails that she's referring to that -- you know, this is an
15 entire e-mail account. It would probably be better to reserve
16 on this.

17 MS. CHOI: It's hundreds of pages, so yes. I picked
18 out the ones that I believe violate 403, but there are related-
19 like e-mails in this e-mail account where the printout will be
20 provided to the jury. They will get a chance to thumb through
21 hundreds of pages of e-mails --

22 MS. KING: And the State is not entering hundreds of
23 e-mails. The State will only be entering e-mails that are
24 relevant to this case that show a pattern of the defendant e-
25 mailing himself or the defendant or e-mails containing images

1 of children. That's it.

2 THE COURT: How many do you plan on introducing?

3 MS. KING: I'd proffer to the Court maybe ten.

4 THE COURT: All right, I think we can address those
5 individually. Now, you've got a motion, Ms. Choi, regarding
6 the State's expert?

7 MS. CHOI: Yes, Your Honor. With regard to the
8 State's expert -- Court's indulgence. It is at the end of the
9 motion that I filed, Your Honor. Essentially, the State
10 disclosed Special Agent Dickson as a rebuttal expert witness on
11 May 24, 2017. She did tell me -- gave me a heads up prior
12 to -- that he would most likely testify if our expert, Mark
13 Johnson, were to testify. So Your Honor, it's been more than
14 one month when I actually found the identity of who that
15 rebuttal expert was -- the information that we received from
16 Mr. Dickson are literally 1600 pages of some kind of analysis
17 gibberish, without any kind of curriculum vitae or any kind of
18 a report basically stating what it is that he did.

19 I have no idea what kind of examination he did. I
20 have no idea what his qualifications are. I have no idea with
21 regard to the final analysis and the conclusion, because
22 nothing was provided. Now, I would say, Your Honor, that in
23 this particular case, we understand that it's a rebuttal
24 witness. However, because it is an expert, Maryland Rule 4-
25 263D still applies. They have an obligation to provide us all

1 of the written reports and the grounds for which they provide
2 their opinions and just the way the State demanded it from the
3 defense, I need to have that ability as well.

4 But to just bring in 1,600 pages potentially of
5 gibberish that no one is going to understand except for the
6 expert himself, and not have this expert, the defense expert
7 have an opportunity to even look through all of that, he got
8 1,600 pages within the last three days.

9 Your Honor, it's just going to be unfair surprise.
10 It is not -- it violates the defendant's right to notice, Your
11 Honor. And as a result, it's going to confuse the jury. It's
12 not going to help them understand one way or the other what
13 that gibberish all means. Because there's no report to back it
14 up, Your Honor.

15 MS. KING: And Your Honor, it's a rebuttal witness.
16 We're not even required to give her notification. I gave her
17 notification out of a courtesy. And as we stated in chambers,
18 Your Honor, the defense stated when we requested our
19 postponement that one, we would be obtaining rebuttal witness
20 in response to their expert that we were just disclosed. We
21 requested a postponement to give them the time and the
22 opportunity to find out the findings of our expert. They
23 oppose that. And now they're going to try to exclude our
24 rebuttal expert. I mean, it's highly prejudicial to the State.

25 The State has an opportunity to recall any witness in

1 rebuttal to their expert. There is no written opinion because
2 an expert has the opportunity to sit in court and listen to
3 what their expert is going to testify to.

4 We provided his analysis and citing from the
5 defense --

6 THE COURT: That's the 1600 pages of gibberish?

7 MS. KING: Yes, Your Honor, it was an analysis that
8 was computer generated that the State -- Ms. Choi stated
9 actually when we were arguing about the qualification of her
10 experts that that expert had the opportunity and did review
11 that. So I would argue that he has the opportunity and the
12 same amount of time that our expert had. And I even told Ms.
13 Choi that this expert was away on --

14 THE COURT: Well, let me ask you a question. The
15 1600 pages, is this something --

16 MS. KING: No, that's not going to be admitted to the
17 jury. It's --

18 MS. CHOI: Your Honor, if I may? There is case law,
19 and it's very clear. And that's what is written in my motion
20 is that the disclosure requirements that apply to expert
21 testimony to be used in case in chief should also apply to that
22 to be used in rebuttal. And that is Dorsey v. Noyd (phonetic
23 sp.). It provides very specifically that neither Rule 2-402-A,
24 Rule 2-504-B, nor the scheduling order distinguish between
25 expert testimony to be presented in the party's case in chief

1 and expert testimony to be used in rebuttal.

2 So Your Honor, in this particular situation, the
3 expert rules do apply. There's got to be more notice. And in
4 fact, the defense expert provided their written statement and
5 they had over a month. We got the analysis literally over the
6 weekend on a Memorial Day holiday weekend.

7 MS. KING: And Your Honor, the case that Ms. Choi
8 cites is entirely distinguishable from this case. In that
9 case, the expert rebuttal expert witness was the same expert
10 witness in the State's case in chief. It was providing new,
11 different opinions. That's entirely different from this case.
12 And the State would refer to Huey v. State, 311 Md. 473 where
13 the Court held that a rebuttal witness -- the only requirement
14 for the State is to provide any reports that were relied on by
15 the rebuttal, that even in that case, the State didn't have to
16 provide who their witness was.

17 MS. CHOI: I think I'm getting confused. I thought
18 that the rebuttal witness was going to be Special Agent Michael
19 Dickson?

20 MS. KING: That's correct. And I'm saying out of
21 courtesy, we told you who it was. The State didn't even need
22 to provide who it was. So we're in full compliance of the rule
23 is what the State is arguing.

24 MS. CHOI: Not so, because the case law says
25 differently. The case law says that when there's a rebuttal

1 expert, that person has to be disclosed. Whatever information
2 he's going to use has to be provided. And not within the 11th
3 hour, Your Honor. I understand Ms. King did provide me the
4 courtesy of letting me know that there's going to be a rebuttal
5 expert. I didn't get that information until the 11th hour,
6 Your Honor.

7 I forwarded it to my defense expert --

8 THE COURT: Of course this is all assuming that the
9 State is able to qualify Agent Dickson as an expert.

10 MS. CHOI: I'm going to assume that, Your Honor.

11 They wouldn't use -- the State is not going to use --

12 THE COURT: All right, I'm going to reserve on that.

13 MS. CHOI: Thank you, Your Honor. And I think that
14 would conclude the defense's request for motion in limine, Your
15 Honor.

16 THE COURT: Would you get those cases they cited on
17 the rebuttal expert?

18 THE CLERK: Yes.

19 THE COURT: Okay. All right, very well. We are
20 scheduled to begin at 1:00 with jury selection. Do we know how
21 many people we're bringing in?

22 MS. KING: No, Your Honor, I don't know what the
23 panels --

24 THE COURT: Do we have a jury list?

25 THE CLERK: We do not have a jury list but she said

1 that the jury would be available to bring up before 1:00 if you
2 wanted to start before 1:00.

3 THE COURT: What time is it now?

4 THE CLERK: 11:00.

5 THE COURT: 11:00?

6 MS. KING: If Your Honor wanted to pick a jury before
7 then, I'm able to, if I could just take a brief recess. Thirty
8 minutes?

9 THE COURT: You want to take a recess and then begin
10 picking the jury?

11 MS. KING: Yes.

12 THE COURT: Why don't we schedule -- let's leave it
13 at 1:00.

14 MS. KING: Okay, thank you, Your Honor.

15 THE COURT: We'll do it at 1:00. We'll start it.
16 All right, counsel, thank you for your arguments. They have
17 been elucidating. Of course, I have to confess that it would
18 be impossible I'm sure to find a judge to hear this case who is
19 less computer literate than I am. So don't assume anything.

20 MS. CHOI: Thank you, Your Honor.

21 (Discussion off the record.)

22 THE COURT: All right.

23 THE BAILIFF: All rise.

24 (Recess)

25 THE BAILIFF: All rise.

1 THE COURT: Good afternoon. Be seated, please.

2 MS. KING: Good afternoon, Your Honor. Joyce King on
3 behalf of the State. And just for the record, this is State of
4 Maryland versus Abe Mallik, 059271.

5 MS. CHOI: Good afternoon, Your Honor. For the
6 record, Sun Choi on behalf of Mr. Mallik, who is standing to my
7 left.

8 THE COURT: Good afternoon. For the record, I'm
9 going to deny the motion to exclude the State's expert witness.

10 MS. KING: Thank you, Your Honor.

11 THE COURT: All right, now let's proceed. Now, the
12 pool, the panel, are they there?

13 THE CLERK: I believe they're waiting for us.

14 THE COURT: Let's bring them in.

15 (The prospective jurors entered the courtroom.)

16 THE COURT: Good afternoon, ladies and gentlemen. My
17 name is Michael M. Galloway. I am the judge who is presiding
18 over this case. This is State of Maryland versus Abe Mallik.
19 And you are called in today to serve as prospective jurors.
20 Some of you will be selected. Not everyone. This is
21 anticipated to be a three day trial, so we'll pick a couple of
22 alternates. In addition to the 12 jurors that we're required
23 to pick. The alternates would step into the role of a juror if
24 a juror could not complete the trial for some reason.

25 So we'll have I guess a total of 14 people from the

1 60 or so who are here today who will ultimately serve on this
2 jury. Now, you're performing a function today which in my view
3 is one of the most important functions -- not only in our legal
4 system, but also its in my view one of the most important
5 functions that you can perform as a part of our democratic
6 system of government. Most of you know this, but I'll say it
7 anyway. There are a lot of places on this earth where when
8 someone is accused of something, they don't get a trial.
9 Somebody just comes and carts them off and many times no one
10 ever sees them again.

11 Then there are places where they get a trial, but
12 it's a sham trial. The State has all of the power and the
13 judges are not necessarily impartial. And then there are those
14 places where -- like this country -- where you actually get a
15 trial before either an impartial, unbiased judge, or before 12
16 people selected randomly from the community, a jury of your
17 peers, and you get to have those 12 people hear the evidence in
18 the case, bring all of their prior experiences and common sense
19 to the case, and decide the case. And we do this not only in
20 criminal trials, but civil trials as well.

21 Now, I think we can all envision a situation where
22 maybe we might be in court, might have a case of one kind,
23 could be civil, could be criminal, but we can all envision
24 wanting to have 12 people from the community rather than one
25 person such as myself decide the case. So I look upon this and

1 I think, you know, we're lucky. We're very lucky. Because we
2 live in a country where first of all, in a criminal case,
3 you're presumed innocent. Secondly, you get a jury before your
4 peers and their verdict has to be unanimous. Twelve people
5 have to agree on the verdict, either guilty or not guilty. And
6 the State has a pretty heavy burden -- proof beyond a
7 reasonable doubt. So I for one am glad I live in this country.
8 It's one of the reasons that I am proud to be an American,
9 because jury trials serve a very important function in our
10 justice system.

11 Now ladies and gentlemen, we're going to, as I said,
12 pick 12 people plus two alternates. And the way we do that, we
13 go through a process called voir dire. And voir dire is a
14 process where you're asked to respond to questions. And if you
15 have anything to say in response to a certain question, what
16 you should do is stand up, repeat your juror number -- don't
17 tell us your name, just your juror number, and give your
18 response.

19 Now, if it's something that you don't want everyone
20 to hear, that you consider to be of a personal nature, you can
21 indicate that and you can come up to the bench with counsel and
22 the defendant and the clerk and give us your response. And we
23 have a device -- a wind machine, a cloaking device so that the
24 only people who will hear your answer are myself, the clerk,
25 the attorneys, the defendant, and then those people who are

1 located somewhere else in the building who are tasked with the
2 responsibility to record these proceedings.

3 So if you feel that this isn't something you want to
4 say in front of everyone, indicate that and you can come up
5 here and we'll take your answer up here.

6 Now, ultimately, there are reasons that people are
7 excluded from the jury. One is one of the attorneys exercises
8 what we call a peremptory challenge. All right? And a
9 peremptory challenge is one where they don't have to give a
10 reason. They can say I want to excuse juror number whatever,
11 and nobody asks them why. Because they don't have to tell you
12 why. It may be they look at you and say that person just looks
13 like somebody who wouldn't be favorable to my side of the case.
14 They don't know much about you. The only thing that we have on
15 our list is your name, your level of education, the town that
16 you reside in, your occupation, and the occupation of your
17 spouse. So that's all they knew about you. And they may see
18 something there. They may say, well, because of this person's
19 age or level of education or something else -- or maybe you're
20 married to a police officer. Maybe they'd look at that and say
21 I want to excuse that person.

22 Another reason you could be excused is for cause.
23 And that's based upon what you say in response to these
24 questions. All right, we all have biases. We all have
25 prejudices. What is very important here, very crucial, is that

1 if you have some prior experience which causes you to have some
2 bias of some kind, it's important that you let us know that.
3 All right? I have prejudices and biases. We all do. We're
4 influenced by different things in our environment, things that
5 happen to us during the course of our lives. So nobody is
6 immune from that. All right?

7 And the final reason for you not being chosen would
8 be we get 12 people before we reach you. So those are the
9 three reasons why you may not be picked -- peremptory
10 challenge, challenge for cause, and just by mere chance. All
11 right?

12 Madam Clerk, would you call the roll? When your
13 number is called, please stand, repeat your number in a loud
14 clear voice, and then you can sit down. Madam Clerk?

15 THE CLERK: Number one?

16 PROSPECTIVE JUROR NO. 1: Juror No. 1.

17 THE CLERK: Number 2?

18 PROSPECTIVE JUROR NO. 2: Juror No. 2.

19 THE CLERK: Number 3?

20 PROSPECTIVE JUROR NO. 3: Juror No. 3.

21 THE CLERK: Number 4?

22 PROSPECTIVE JUROR NO. 4: Juror No. 4.

23 THE CLERK: Number 5?

24 PROSPECTIVE JUROR NO. 5: Juror No. 5.

25 THE CLERK: Number 6?

1 PROSPECTIVE JUROR NO. 6: Juror No. 6.
2 THE CLERK: Number 7?
3 PROSPECTIVE JUROR NO. 7: Juror No. 7.
4 THE CLERK: Number 8?
5 PROSPECTIVE JUROR NO. 8: Juror No. 8.
6 THE CLERK: Number 9?
7 PROSPECTIVE JUROR NO. 9: Juror No. 9.
8 THE CLERK: Number 10?
9 PROSPECTIVE JUROR NO. 10: Juror No. 10.
10 THE CLERK: Number 11?
11 PROSPECTIVE JUROR NO. 11: Juror No. 11.
12 THE CLERK: Number 12?
13 PROSPECTIVE JUROR NO. 12: Juror No. 12.
14 THE CLERK: Number 13?
15 PROSPECTIVE JUROR NO. 13: Juror No. 13.
16 THE CLERK: Number 14?
17 PROSPECTIVE JUROR NO. 14: Juror No. 14.
18 THE CLERK: Number 15?
19 PROSPECTIVE JUROR NO. 15: Juror No. 15.
20 THE CLERK: Number 16?
21 PROSPECTIVE JUROR NO. 16: Juror No. 16.
22 THE CLERK: Number 17?
23 PROSPECTIVE JUROR NO. 17: Juror No. 17.
24 THE CLERK: Number 18?
25 PROSPECTIVE JUROR NO. 18: Juror No. 18.

1 THE CLERK: Number 19?
2 PROSPECTIVE JUROR NO. 19: Juror No. 19.
3 THE CLERK: Number 20?
4 PROSPECTIVE JUROR NO. 20: Juror No. 20.
5 THE CLERK: Number 21?
6 PROSPECTIVE JUROR NO. 21: Juror No. 21.
7 THE CLERK: Number 22?
8 PROSPECTIVE JUROR NO. 22: Juror No. 22.
9 THE CLERK: Number 23?
10 PROSPECTIVE JUROR NO. 23: Juror 23.
11 THE CLERK: Number 24?
12 PROSPECTIVE JUROR NO. 24: Juror 24.
13 THE CLERK: Number 25?
14 PROSPECTIVE JUROR NO. 25: Juror No. 25.
15 THE CLERK: Number 26?
16 PROSPECTIVE JUROR NO. 26: Juror No. 26.
17 THE CLERK: Number 27?
18 PROSPECTIVE JUROR NO. 27: Juror No. 27.
19 THE CLERK: Number 28?
20 PROSPECTIVE JUROR NO. 28: Juror No. 28.
21 THE CLERK: Number 29?
22 PROSPECTIVE JUROR NO. 29: Juror No. 29.
23 THE CLERK: Number 30?
24 PROSPECTIVE JUROR NO. 30: Juror No. 30.
25 THE CLERK: Number 31?

1 PROSPECTIVE JUROR NO. 31: Juror No. 31.
2 THE CLERK: Number 32?
3 PROSPECTIVE JUROR NO. 32: Juror No. 32.
4 THE CLERK: Number 33?
5 PROSPECTIVE JUROR NO. 33: Juror No. 33.
6 THE CLERK: Number 34?
7 PROSPECTIVE JUROR NO. 34: Juror No. 34.
8 THE CLERK: Number 35?
9 PROSPECTIVE JUROR NO. 35: Juror No. 35.
10 THE CLERK: Number 36?
11 PROSPECTIVE JUROR NO. 36: Juror 36.
12 THE CLERK: Number 37?
13 PROSPECTIVE JUROR NO. 37: Juror No. 37.
14 THE CLERK: Number 38?
15 PROSPECTIVE JUROR NO. 38: Juror No. 38.
16 THE CLERK: Number 39?
17 PROSPECTIVE JUROR NO. 39: Juror No. 39.
18 THE CLERK: Number 40?
19 PROSPECTIVE JUROR NO. 40: Juror No. 40.
20 THE CLERK: Number 41?
21 PROSPECTIVE JUROR NO. 41: Juror No. 41.
22 THE CLERK: Number 42?
23 PROSPECTIVE JUROR NO. 42: Juror No. 42.
24 THE CLERK: Number 43?
25 PROSPECTIVE JUROR NO. 43: Juror No. 43.

1 THE CLERK: Number 44?
2 PROSPECTIVE JUROR NO. 44: Juror No. 44.
3 THE CLERK: Number 45?
4 PROSPECTIVE JUROR NO. 45: Juror No. 45.
5 THE CLERK: Number 46?
6 PROSPECTIVE JUROR NO. 46: Juror No. 46.
7 THE CLERK: Number 47?
8 PROSPECTIVE JUROR NO. 47: Juror No. 47.
9 THE CLERK: Number 48?
10 PROSPECTIVE JUROR NO. 48: Juror No. 48.
11 THE CLERK: Number 49?
12 PROSPECTIVE JUROR NO. 49: Juror No. 49.
13 THE CLERK: Number 50?
14 PROSPECTIVE JUROR NO. 50: Juror No. 50.
15 THE CLERK: Number 51?
16 PROSPECTIVE JUROR NO. 51: Juror No. 51.
17 THE CLERK: Number 52?
18 PROSPECTIVE JUROR NO. 52: Juror No. 52.
19 THE CLERK: Number 53?
20 PROSPECTIVE JUROR NO. 53: Juror No. 53.
21 THE CLERK: Number 54?
22 PROSPECTIVE JUROR NO. 54: Juror 54.
23 THE CLERK: Number 55?
24 PROSPECTIVE JUROR NO. 55: Juror No. 55.
25 THE CLERK: Number 56?

1 PROSPECTIVE JUROR NO. 56: Juror 56.

2 THE CLERK: Number 57?

3 PROSPECTIVE JUROR NO. 57: Juror No. 57.

4 THE CLERK: Number 58?

5 PROSPECTIVE JUROR NO. 58: Juror No. 58.

6 THE CLERK: Number 59?

7 PROSPECTIVE JUROR NO. 59: Juror No. 59.

8 THE CLERK: Number 60?

9 PROSPECTIVE JUROR NO. 60: Juror No. 60.

10 THE COURT: Is there anyone present whose number I did
11 not call?

12 (No response.)

13 JURY SELECTION

14 THE COURT: Ladies and gentlemen, we have perfect
15 attendance. And that's important. I come from a county which
16 adjoins Frederick County, Carroll County, and we have the same
17 situation where people receive a notice and they appear. But
18 there are places in this state where that's not the case. So
19 if they want to have a pool of say -- like we have today here
20 60, rather than just sending out maybe a notice for -- notices
21 for 80 people, with the idea that somebody won't respond or
22 show up or whatever, they have to send out a couple of hundred
23 notices, because they know they're going to have a high rate of
24 absenteeism. You're to be commended and we appreciate you
25 being here today. I know you all have very busy lives, you

1 have full plates, you have commitments, personal, professional,
2 work related, and this is no small imposition. And be assured
3 that we appreciate your service.

4 Now, Madam Clerk, if you would swear the jurors in?

5 THE CLERK: Ladies and gentlemen of the prospective
6 jury, please stand and raise your right hand. Do each of you
7 solemnly declare and affirm under the penalties of perjury that
8 you shall truthfully answer all the questions that the Court
9 shall demand of you? If so, please respond I do.

10 PROSPECTIVE JURORS: I do.

11 THE CLERK: Thank you. You may be seated.

12 THE COURT: Ladies and gentlemen, I'll start out with
13 an easy one. Anybody here who is not at least 18 years of age?

14 (No response.)

15 Anyone who is not a citizen of this country?

16 (No response.)

17 Anyone not a resident of Frederick County?

18 (No response.)

19 Anyone ever convicted of a felony or a crime where
20 the maximum penalty was six months or more than six months?

21 (No response.)

22 It looks like you're all well behaved. All right,
23 ladies and gentlemen, let's begin with voir dire questions and
24 these questions are generated by both the State and the
25 defense. They're very similar and again, these questions are

1 not for the purpose of prying into your personal affairs, but
2 only for the purpose of obtaining an impartial jury who can
3 listen to the evidence in this case and base their decision
4 solely upon the evidence, the testimony which they see and hear
5 in this courtroom.

6 The defendant in this case is Abe Mallik. Does any
7 member of the prospective jury know the defendant?

8 (No response.)

9 You can sit down. Thank you. Number two, counsel
10 for the defendant is Sun E. Choi, Esquire, of DC Metro Law,
11 LLC. Anyone know Ms. Choi or her firm?

12 (No response.)

13 Anyone ever been represented by Ms. Choi or her firm?

14 (No response.)

15 The State is represented by Assistant State's
16 Attorney Joyce R. King. Any member of the panel know Ms. King
17 in any capacity?

18 (No response.)

19 There are three possible defense witnesses who may be
20 called. The defendant, Mark Johnson -- anyone know Mark
21 Johnson? I see a hand being raised.

22 PROSPECTIVE JUROR: I know a man named Mark Johnson,
23 but I don't know if it's the same.

24 THE COURT: You know a man named Mark Johnson?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: The Mark Johnson in this case, counsel,
2 is --

3 MS. CHOI: He is an African-American information
4 technology specialist --

5 PROSPECTIVE JUROR: Not that Mark Johnson.

6 MS. CHOI: Okay.

7 THE COURT: Okay, no one knows Mr. Johnson?

8 (No response.)

9 And then Nikita Mallik? 14 year old minor.

10 (No response.)

11 Now, other witnesses who may testify in this case,
12 John Sheehan?

13 PROSPECTIVE JUROR: I do know John Sheehan.

14 MS. KING: And Your Honor, we have stipulated to that
15 witness. We won't be calling him.

16 THE COURT: All right. That witness will not be
17 called. All right. Cpl. Daniel Romeril?

18 (No response.)

19 Deputy First Class Gary Mariati (phonetic sp.)?

20 (No response.)

21 Detective William Elrod?

22 (No response.)

23 Steve Gibson?

24 (No response.)

25 Detective Jason Snyder?

1 (No response.)

2 Michael Dickson, D-I-C-K-S-O-N?

3 (No response.)

4 Does anyone know anything about this case? The
5 charge has to do with possession of child pornography. Anyone
6 know anything about this case from any source?

7 (No response.)

8 Is there any member of the panel or your immediate
9 family who has been the victim of a crime?

10 (No response.)

11 Any member of the panel or your family ever been
12 involved in a similar legal proceeding either as a party,
13 witness, or a juror?

14 MS. KING: Your Honor, with regard to the prior
15 question --

16 THE COURT: That was the question, ever been a
17 victim?

18 (Bench conference follows:)

19 THE COURT: All right, your juror number?

20 PROSPECTIVE JUROR NO. 11: 11.

21 THE COURT: 11?

22 PROSPECTIVE JUROR NO. 11: My daughter was a victim
23 of sexual assault when she was a child.

24 THE COURT: Okay, and how long ago was that?

25 PROSPECTIVE JUROR NO. 11: She's 25 now. It happened

1 when she was 13.

2 THE COURT: All right.

3 PROSPECTIVE JUROR NO. 11: And he was charged here
4 and he had to get on the sex offender's list.

5 THE COURT: I'm sorry, what?

6 PROSPECTIVE JUROR NO. 11: He was put on the sex
7 offender's list.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 11: He pleaded out.

10 THE COURT: Okay. Given that, could you be fair and
11 impartial in this case if you were picked to the jury?

12 PROSPECTIVE JUROR NO. 11: I'm not sure, because I
13 don't know what the case is. I know that I'm very -- you know,
14 having a child that went through that -- I don't know what this
15 case is, but I'm not sure I could be. That's up to you guys.
16 I want to be fair.

17 THE COURT: Okay. Juror No. 11 --

18 PROSPECTIVE JUROR NO. 11: Sit back down?

19 THE COURT: Yes.

20 PROSPECTIVE JUROR NO. 11: Okay.

21 (Bench conference concluded.)

22 THE COURT: Juror No. 14?

23 PROSPECTIVE JUROR NO. 14: 14.

24 THE COURT: 14? Do you want to give your answer up
25 here?

1 PROSPECTIVE JUROR NO. 14: Yes.

2 THE COURT: Okay.

3 (Bench conference follows:)

4 PROSPECTIVE JUROR NO. 14: So your question was
5 whether I know someone in my family that had been a victim of
6 sexual crime, right?

7 THE COURT: Been a victim of crime.

8 PROSPECTIVE JUROR NO. 14: Okay. Yes. I mean, my --
9 I believe there was someone in my family that was -- she didn't
10 report it to me, but was physically touched inappropriately
11 when she was younger.

12 THE COURT: Someone in the family?

13 PROSPECTIVE JUROR NO. 14: Uh-huh, that was touched
14 inappropriately when she was younger.

15 THE COURT: What's your relationship to this person?

16 PROSPECTIVE JUROR NO. 14: Sister.

17 THE COURT: Sister? Okay. And how long ago was
18 this?

19 PROSPECTIVE JUROR NO. 14: Oh, 30 years ago.

20 THE COURT: Do you think --

21 PROSPECTIVE JUROR NO. 14: I mean, I heard things and
22 I was, you know, trying to open the door on things. It was
23 never reported.

24 THE COURT: Can you be fair and impartial in this
25 case?

1 PROSPECTIVE JUROR NO. 14: I'm not sure.

2 THE COURT: Okay, thank you. You can take your seat.

3 (Bench conference concluded.)

4 THE COURT: If there's anybody else who plans on
5 responding, just stand here between the tables so counsel
6 doesn't have to keep going back and forth.

7 (Bench conference follows:)

8 THE COURT: Juror number?

9 PROSPECTIVE JUROR NO. 4: 4.

10 THE COURT: Okay, what would you like to tell us?

11 PROSPECTIVE JUROR NO. 4: This is just so
12 embarrassing because there's so many people here. When I was
13 young, I was molested by somebody who subsequently -- because I
14 never told. And I subsequently -- he was caught on subsequent
15 occasions and went to prison for a while.

16 THE COURT: Good.

17 PROSPECTIVE JUROR NO. 4: And so I just wasn't sure
18 if I should say anything.

19 THE COURT: Well, sure. Sure. And that's why we
20 bring you up here, so you can do it in private. Now, ma'am,
21 given that, would you be able to hear this case and be fair and
22 impartial?

23 PROSPECTIVE JUROR NO. 4: I believe I would. I
24 believe I would. I just -- you know, it is something that
25 happened in my life and I think I would be.

1 THE COURT: All right, thank you. You can be seated.

2 PROSPECTIVE JUROR NO. 58: 58.

3 THE COURT: Juror No. 58. And what would you like to
4 tell us?

5 PROSPECTIVE JUROR NO. 58: It was the question if
6 I've been a victim of a crime?

7 THE COURT: Yes.

8 PROSPECTIVE JUROR NO. 58: I was attacked by someone
9 high on PCP. So I had to press assault charges. I don't know
10 if that counted.

11 THE COURT: Yes. Victim of any crime. Now, based on
12 that, would that allow you to be fair and impartial in this
13 case if you're picked for a jury?

14 PROSPECTIVE JUROR NO. 58: Yes, those are totally
15 different circumstances.

16 THE COURT: Okay, thank you.

17 PROSPECTIVE JUROR NO. 58: Thank you.

18 THE COURT: This is Juror No. 1?

19 PROSPECTIVE JUROR NO. 1: Yes. Hello. My husband's
20 daughter, my stepdaughter, was molested. So I don't know if --

21 THE COURT: How long ago was that?

22 PROSPECTIVE JUROR NO. 1: You know, I don't know
23 exactly. It's been a few years.

24 THE COURT: Okay. Would that give you a problem with
25 being fair and impartial if you're picked to the jury in this

1 case?

2 PROSPECTIVE JUROR NO. 1: I don't think so. I just
3 didn't know if I should come up. Okay, thanks.

4 PROSPECTIVE JUROR NO. 23: Juror No. 23.

5 THE COURT: 23? What would you like to tell us?

6 PROSPECTIVE JUROR NO. 23: I'd like to tell you about
7 my wife. She was the victim of sexual abuse and it caused us
8 much pain and suffering and financial stress and emotional
9 stress for many years.

10 THE COURT: And given that history, could you be fair
11 and impartial in this case?

12 PROSPECTIVE JUROR NO. 23: I'm biased.

13 THE COURT: All right, what I'm going to do is I'm
14 going to strike you. Now just have a seat. You don't have to
15 respond to any more questions. Just wait until we excuse
16 everyone.

17 PROSPECTIVE JUROR NO. 23: Thank you, sir.

18 THE COURT: Just stay seated.

19 PROSPECTIVE JUROR NO. 23: Will do. Thank you.

20 THE COURT: Juror number?

21 PROSPECTIVE JUROR NO. 42: 42.

22 THE COURT: 42? And what would you like to tell us,
23 sir?

24 PROSPECTIVE JUROR NO. 42: Well, I was molested as a
25 child by a neighbor. He was never charged. And my parents --

1 I didn't even know what to say. I didn't tell them until I was
2 about 20. So there was no charge. I just knew that the guy's
3 name was Terry and I did see him -- it happened in '77 and I
4 saw him in '83. And that's the first thing I thought of.

5 THE COURT: Do you think you could be fair and
6 impartial in this case? You do? Okay.

7 PROSPECTIVE JUROR NO. 42: Yes, I do.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 42: I kind of just put it out
10 of my mind. I didn't even think about it until I was sitting
11 there and I was like, I should say something.

12 THE COURT: Well, it's natural that your mind tries
13 to forget those things. Thank you, sir.

14 PROSPECTIVE JUROR NO. 42: You're welcome.

15 PROSPECTIVE JUROR NO. 30: Juror No. 30. You did say
16 if you were the victim of a crime, correct?

17 THE COURT: Huh?

18 PROSPECTIVE JUROR NO. 30: You did say if you were
19 the victim of a crime?

20 THE COURT: Yes. Juror No. 30?

21 PROSPECTIVE JUROR NO. 30: Yes. I was robbed at
22 gunpoint. It was a long, long time ago, but --

23 THE COURT: Where did that happen?

24 PROSPECTIVE JUROR NO. 30: In Suitland, Maryland. I
25 had a business. Yeah.

1 THE COURT: And do you think you could be fair and
2 impartial in this case?

3 PROSPECTIVE JUROR NO. 30: Yes.

4 THE COURT: All right, thank you.

5 PROSPECTIVE JUROR NO. 30: Okay.

6 THE COURT: Juror number?

7 PROSPECTIVE JUROR NO. 32: 32.

8 THE COURT: 32?

9 PROSPECTIVE JUROR NO. 32: Yes. I have an uncle that
10 was convicted of something related to a minor. Convicted of
11 sexual assault on a minor.

12 THE COURT: Do you think you could be fair and
13 impartial in this case?

14 PROSPECTIVE JUROR NO. 32: Probably not.

15 THE COURT: All right, what I'm going to do is strike
16 you. But have a seat.

17 PROSPECTIVE JUROR NO. 32: All right.

18 THE COURT: You don't have to answer any more
19 questions.

20 PROSPECTIVE JUROR NO. 32: All right.

21 THE COURT: But wait to leave until I excuse
22 everyone. Okay?

23 PROSPECTIVE JUROR NO. 32: All right.

24 THE COURT: Thank you. Anyone else?

25 (Bench conference concluded.)

1 THE COURT: Anyone on our panel who has previously
2 been qualified as an expert in a lawsuit? Juror Number?

3 PROSPECTIVE JUROR NO. 8: 11. 8. Pardon me.

4 THE COURT: And in what field?

5 PROSPECTIVE JUROR NO. 8: Disaster restoration.

6 THE COURT: I'm sorry?

7 PROSPECTIVE JUROR NO. 8: Disaster restoration. I'm
8 currently involved in trial.

9 THE COURT: Do you think you can be fair and
10 impartial in this case?

11 PROSPECTIVE JUROR NO. 8: No.

12 THE COURT: Because of that or something else?

13 PROSPECTIVE JUROR NO. 8: Because of something else.

14 (Bench conference follows:)

15 PROSPECTIVE JUROR NO. 8: My daughter is currently
16 undergoing counseling for being abused sexually, sexually
17 abused by her father.

18 THE COURT: Okay, and you don't think you can be fair
19 and impartial?

20 PROSPECTIVE JUROR NO. 8: Not if there's a minor or a
21 child involved.

22 THE COURT: Well, I should say this to you, just by
23 way of clarification. The defendant is not charged with
24 abusing anyone. But what he is charged with is being in
25 possession of child pornography. So this is not really an

1 abuse case, but somewhat related.

2 PROSPECTIVE JUROR NO. 8: Yes. I think that in a
3 way, that's a gateway.

4 THE COURT: Your number?

5 PROSPECTIVE JUROR NO. 8: Number 8.

6 THE COURT: All right, I'm going to strike you, but
7 remain in the courtroom. Just have a seat. Don't leave until
8 I excuse everyone. But you don't have to answer any more
9 questions.

10 PROSPECTIVE JUROR NO. 8: Okay, thank you.

11 THE COURT: Okay.

12 (Bench conference concluded.)

13 PROSPECTIVE JUROR NO. 15: You had asked a question
14 earlier about people with experience in this type of case, and
15 I wasn't sure if --

16 THE COURT: Yes, that question was --

17 PROSPECTIVE JUROR NO. 15: Because you had asked one
18 and then people started coming up, and then you asked the other
19 one.

20 THE COURT: This has to do with whether any member of
21 the panel or your immediate family has ever been involved in a
22 similar legal proceeding, either as a party witness or juror.

23 PROSPECTIVE JUROR NO. 15: Law enforcement not
24 included?

25 THE COURT: Law enforcement is always included.

1 (Bench conference follows:)

2 THE COURT: Number?

3 PROSPECTIVE JUROR NO. 15: 15.

4 THE COURT: All right, what would you like to tell
5 us, sir?

6 PROSPECTIVE JUROR NO. 15: I'm a retired Fairfax
7 County sergeant. And I have worked on child abuse, sexual
8 crimes, rape -- all of them.

9 THE COURT: Now, would any of that give you a problem
10 in being fair and impartial in this case?

11 PROSPECTIVE JUROR NO. 15: It's my least favorite
12 crime, but I can still be impartial.

13 THE COURT: Well, that's not unusual. But the issue
14 is whether or not -- and some people, when they hear what the
15 charge is, they say no way I can be fair and impartial.

16 PROSPECTIVE JUROR NO. 15: I've had to my whole
17 career, so I can do it.

18 THE COURT: You think you can be fair and impartial?

19 PROSPECTIVE JUROR NO. 15: Yes, sir.

20 THE COURT: Let me ask you one other question while I
21 have you here. Given that you're a member of law enforcement,
22 would you be inclined to give more or less weight to the
23 testimony of a police officer merely because that officer is a
24 police officer as opposed to other civilian witnesses?

25 PROSPECTIVE JUROR NO. 15: No.

1 THE COURT: All right. Very good.

2 PROSPECTIVE JUROR NO. 15: I do have one more thing
3 to ask you, though. My son graduates on Friday -- will we be
4 done by Friday?

5 MS. CHOI: Oh, I hope.

6 PROSPECTIVE JUROR NO. 15: I hope so, too.

7 THE COURT: Where does he go to school?

8 PROSPECTIVE JUROR NO. 15: St. John.

9 THE COURT: And he's graduating, and what are his
10 plans after graduation?

11 PROSPECTIVE JUROR NO. 15: Well, he's coming out of
12 8th grade. He's leaving St. John's School and then he's going
13 to Linganore. And so --

14 THE COURT: He's going to be a Lancer?

15 PROSPECTIVE JUROR NO. 15: That's right. He wants to
16 play lacrosse for them.

17 THE COURT: Very good. Very good. If he's really
18 good, tell him to go to Maryland.

19 PROSPECTIVE JUROR NO. 15: He's good. Thank you,
20 sir.

21 PROSPECTIVE JUROR NO. 34: Yes, sir, I'm retired
22 Federal Bureau of Investigation. I was director of
23 administration for their Office of Professional Responsibility,
24 their Internal Affairs function. We did have at least one case
25 of allegations of child pornography while I was there.

1 THE COURT: Do you think that would prevent you from
2 being fair and impartial if you're picked to serve on this
3 jury?

4 PROSPECTIVE JUROR NO. 34: I don't believe it would,
5 no.

6 THE COURT: All right. You know Mr. Cohn?

7 PROSPECTIVE JUROR NO. 34: I don't. He came in after
8 I retired. I worked under Louie Free and Bob Muller.

9 THE COURT: He's got a great job.

10 PROSPECTIVE JUROR NO. 34: He does have a great job
11 now. I'd like to be working for him.

12 THE COURT: Yes, I'd like to be a fly on the wall.

13 PROSPECTIVE JUROR NO. 34: Bob Muller was my boss for
14 about eight months, but he came in a month before 911. So --
15 and he handled himself admirably while he was there.

16 THE COURT: He has a great reputation.

17 MS. CHOI: I'm sorry, what was the answer if she
18 could be fair and impartial?

19 THE COURT: She says she can be fair and impartial.

20 PROSPECTIVE JUROR NO. 34: I believe I can be fair
21 and impartial.

22 MS. CHOI: Okay.

23 THE COURT: I'm sorry, that's No. 34?

24 PROSPECTIVE JUROR NO. 34: Yes, sir.

25 THE COURT: Thank you.

1 (Bench conference concluded.)

2 THE COURT: Yes, ma'am?

3 (Bench conference follows:)

4 PROSPECTIVE JUROR NO. 35: Juror No. 35. I have a
5 brother in law who is a cop.

6 THE COURT: A brother in law?

7 PROSPECTIVE JUROR NO. 35: Yes.

8 THE COURT: Do you think that would give you a
9 problem in being fair and impartial in this case if you were
10 picked to the jury?

11 PROSPECTIVE JUROR NO. 35: Yes, I do think so. Yes.

12 THE COURT: All right, ma'am. I'm going to strike
13 you, but I want you to have a seat in the courtroom. You don't
14 have to answer any more questions.

15 PROSPECTIVE JUROR NO. 35: Okay. I didn't know if I
16 was supposed to get up on that or not, but I thought everybody
17 else is getting up when you said relative to law enforcement.
18 I thought I'd better stand.

19 THE COURT: All right. Thank you.

20 PROSPECTIVE JUROR NO. 35: Thank you.

21 THE COURT: Anyone else?

22 (No response.)

23 (Bench conference concluded.)

24 THE COURT: Ladies and gentlemen, knowing only what
25 I've told you about the subject matter of this case, is there

1 any member of the panel who has any particular bias which would
2 keep you from being fair and impartial based upon these
3 charges?

4 (Bench conference follows:)

5 THE COURT: Juror No. 41?

6 PROSPECTIVE JUROR NO. 41: 41. I don't know if this
7 has anything to do with anything, but I worked with a guy for
8 10 years that was convicted for child pornography. And he's
9 been sentenced to federal prison. So I don't know -- and that
10 was a close worker with me for ten years. I don't know if that
11 has anything to do with anything, but I just thought I'd --

12 THE COURT: Well, I guess -- yes, it does.

13 PROSPECTIVE JUROR NO. 41: And me being in the IT
14 field.

15 THE COURT: What the question really tries to get to
16 is because of this charge, do you still think you can be fair
17 and impartial and decide the case solely upon the evidence if
18 you're picked to the jury.

19 PROSPECTIVE JUROR NO. 41: Yes, probably -- I think
20 so.

21 THE COURT: Okay, good. Thank you.

22 PROSPECTIVE JUROR NO. 41: Sure.

23 MS. CHOI: He was 41?

24 MS. KING: 41.

25 PROSPECTIVE JUROR NO. 6: No. 6, Your Honor.

1 THE COURT: No. 6? And what would you like to tell
2 us?

3 PROSPECTIVE JUROR NO. 6: When I was younger, I had
4 an older brother, and he played doctor with me without my
5 consent and like -- I was so young and I didn't even know what
6 it was and that's about it. I'm just --

7 THE COURT: I'm not sure I'm following you.

8 PROSPECTIVE JUROR NO. 6: When I was younger --

9 MS. KING: She was abused, sexually abused by her
10 brother.

11 THE COURT: By your brother?

12 MS. CHOI: At least molested.

13 PROSPECTIVE JUROR NO. 6: Yes, I was inappropriately
14 touched and I was so young.

15 THE COURT: Well, given that, do you think you could
16 sit on a jury in this case and be fair and impartial in this
17 case?

18 PROSPECTIVE JUROR NO. 6: I don't think I can, Your
19 Honor.

20 THE COURT: That's Juror No. 6? Okay, what I'm going
21 to do is strike you. You don't have to answer any more
22 questions, but just remain seated until I excuse everyone.
23 Okay?

24 PROSPECTIVE JUROR NO. 6: Thank you so much, Your
25 Honor.

1 THE COURT: You're welcome. Juror number?

2 PROSPECTIVE JUROR NO. 33: 33.

3 THE COURT: 33? What would you like to tell us?

4 PROSPECTIVE JUROR NO. 33: Well, whether you pick me
5 or not I don't care, but I do want you to be aware that my
6 fiancé is a cop and we have talked about these situations
7 before that he's dealt with victims. I don't know if I can
8 truthfully be unbiased towards this situation, but I just
9 wanted you to be aware of that.

10 THE COURT: You're not sure?

11 PROSPECTIVE JUROR NO. 33: And I have a child.

12 THE COURT: Sure.

13 PROSPECTIVE JUROR NO. 33: I mean, I'm not trying to
14 be mean.

15 THE COURT: No, no, this is designed to get it all
16 out so that we can hopefully pick a jury of people who are able
17 to be unbiased, be fair, be impartial. So we want you to be
18 completely honest.

19 PROSPECTIVE JUROR NO. 33: Okay, well, that is my
20 honest opinion. I felt like when I heard it, I have a child
21 and it was just like -- I don't know.

22 THE COURT: All right.

23 PROSPECTIVE JUROR NO. 33: I just want you to be
24 aware.

25 MS. CHOI: No. 33?

1 PROSPECTIVE JUROR NO. 33: 33.

2 THE COURT: 33?

3 PROSPECTIVE JUROR NO. 33: 33.

4 THE COURT: All right, I'm going to strike you. I
5 want you to just remain seated in the courtroom. You don't
6 have to answer any further questions. But just wait until I
7 excuse everyone before you leave, okay.

8 PROSPECTIVE JUROR NO. 33: Okay, thank you.

9 PROSPECTIVE JUROR NO. 44: No. 44.

10 THE COURT: No. 44? What would you like to tell us?

11 PROSPECTIVE JUROR NO. 44: (Unintelligible) older
12 men, especially when it comes to that type of stuff and
13 especially with like a younger child being involved, I just
14 don't know if I -- like I get nauseous about it. I just don't
15 know if I can sit through it, really.

16 THE COURT: So you think you'd have a problem being
17 fair and impartial?

18 PROSPECTIVE JUROR NO. 44: Yeah.

19 THE COURT: Okay, I'm going to strike you. I want
20 you to remain seated in the courtroom. You don't have to
21 answer any more questions. Wait until I excuse everyone before
22 you leave. Okay?

23 PROSPECTIVE JUROR NO. 44: Okay, thank you.

24 MS. KING: Thank you.

25 THE COURT: Juror No. 57? What would you like to

1 tell us, sir?

2 PROSPECTIVE JUROR NO. 57: Am I to understand that a
3 14 year old is involved with a pornography situation with this
4 person? Is that correct?

5 MS. CHOI: No.

6 THE COURT: The charge is simply possession of child
7 pornography. Okay? It doesn't -- there's no charge of abuse,
8 molestation, any -- it's just possession of pornography on
9 computer.

10 MS. CHOI: The 14 year old is the potential
11 witness -- the daughter of the defendant.

12 THE COURT: Yes, the 14 year old is the defense
13 witness.

14 PROSPECTIVE JUROR NO. 57: I understand.

15 THE COURT: Okay?

16 PROSPECTIVE JUROR NO. 57: Yes.

17 THE COURT: You think you can be fair and impartial?

18 PROSPECTIVE JUROR NO. 57: I think so.

19 THE COURT: Very good. Thank you, sir. Number?

20 PROSPECTIVE JUROR NO. 42: 42.

21 THE COURT: 42? What would you like to tell us?

22 PROSPECTIVE JUROR NO. 42: Well, child pornography
23 makes me ill. It's disgusting. It's one of the worst thing I
24 could ever even think could happen to a child, especially with
25 what I mentioned before -- but I did have a friend who I feel

1 was unjustly charged because it was his house and he was
2 renting to a young guy that I know who was ordering the stuff.
3 And because he signed for it and because it was his house, he
4 went away for I don't know how long and that little jerk is
5 still out there. I don't -- I believe that everybody is
6 innocent until proven guilty. But I don't want to see anybody
7 innocent go through a situation like that. Does that make
8 sense?

9 THE COURT: It makes sense. The bottom line is, do
10 you think you can be fair and impartial?

11 PROSPECTIVE JUROR NO. 42: Yes.

12 THE COURT: I think what I hear you saying is you see
13 both sides.

14 PROSPECTIVE JUROR NO. 42: I do. Whoever is guilty
15 needs to be nailed, because that is an extreme case of just --
16 a child is innocent, they don't know anything. I'm not a
17 father, but I love kids. And I just find that disgusting.

18 THE COURT: Repugnant.

19 PROSPECTIVE JUROR NO. 42: Yes, sir.

20 THE COURT: All right, thank you, sir.

21 PROSPECTIVE JUROR NO. 42: All right.

22 MS. CHOI: That was 42?

23 THE COURT: Yes. Number?

24 PROSPECTIVE JUROR NO. 31: 31.

25 THE COURT: 31? What would you like to tell us?

1 PROSPECTIVE JUROR NO. 31: So I'm in school working
2 on my degree in elementary and middle school education, so I'm
3 in and out of public schools a lot. And I deal with a lot of
4 kids who have problems. I'm in Alleghany County student-
5 teaching. So I just have a lot of opinions towards certain
6 situations that the kids tell me about and things like that.
7 So I have opinions about childhood things. That's all.

8 THE COURT: Can you be fair and impartial?

9 PROSPECTIVE JUROR NO. 31: I'd like to think so, but
10 I have a lot of biased opinions.

11 THE COURT: I'm sorry, your number?

12 PROSPECTIVE JUROR NO. 31: 31.

13 THE COURT: Okay, thank you.

14 PROSPECTIVE JUROR: I don't hear very well, so you
15 have to speak up.

16 THE COURT: Neither do I.

17 PROSPECTIVE JUROR: Even with hearing aids. You
18 asked if we could be fair about this type of case. I'm not
19 sure. I mean, I just don't know.

20 THE COURT: Well, let me say a couple of things.
21 That reaction, I think, is pretty normal.

22 PROSPECTIVE JUROR: Is it? Okay.

23 THE COURT: Nobody likes this kind of charge or the
24 thought of it. The question really though is -- and I want to
25 make sure you understand -- there's not an allegation of any

1 abuse of a child by the defendant in this case. This is solely
2 about possession of what is alleged to be child pornography on
3 a computer.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: Now, you know, the issue is -- and your
6 reaction to the charge is a normal one. But would that keep
7 you from sitting in this courtroom, listening to all of the
8 evidence, the testimony, and then deciding the case based upon
9 the evidence or do you think you would be -- because of the
10 nature of the charge, so prejudiced that you couldn't be fair
11 and impartial?

12 PROSPECTIVE JUROR: I really don't know if I could or
13 not. I mean, maybe, maybe not. I mean, it depends I guess on
14 what I hear. Does that make sense?

15 THE COURT: Yes, that makes absolute sense. And
16 ultimately that's what it always should depend on is what you
17 hear, what you see in this courtroom.

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: All right, I'm going to put a question
20 mark by your name. I'm not going to strike you.

21 PROSPECTIVE JUROR: I'm sorry, what?

22 THE COURT: I'm putting a question mark by your name.

23 PROSPECTIVE JUROR: Okay. I'm sorry, I just don't
24 hear well.

25 THE COURT: No, neither do I. But let me tell you,

1 they do have hearing devices here that if you're picked to
2 serve on the jury --

3 PROSPECTIVE JUROR: Really?

4 THE COURT: You can hear --

5 PROSPECTIVE JUROR: Better than hearing aids?

6 THE COURT: Well, I think they're -- now I have very
7 good hearing aids. But these devices, you can pick up
8 sometimes -- I can hear things that I probably shouldn't hear.

9 PROSPECTIVE JUROR: So that's not good, no. So I
10 don't know what I should do then.

11 THE COURT: Well, just have a seat. And counsel will
12 take and I'll take everything that you've said into
13 consideration.

14 PROSPECTIVE JUROR: Okay. All right. Thank you.

15 THE COURT: You're welcome.

16 (Bench conference concluded.)

17 THE COURT: I've had a couple of people address this.
18 I'll ask the question again, but a couple of people have
19 addressed this at the bench. Any member of the panel have
20 friends or family in law enforcement? Now, those of you who
21 have already told me about your connection to law enforcement
22 don't need to respond again. All right, I'm going to let
23 people just give this from -- just stand and I'll go around and
24 call on you. Just state your juror number and give your
25 response. And tell me whether or not the fact that your

1 father, your brother, your cousin is a police officer would
2 keep you from being fair and impartial.

3 All right, we'll start with this young lady and then
4 the gentleman beside and then we'll work our way back and then
5 we'll come over to this side. What would you like to say? And
6 give us your juror number.

7 PROSPECTIVE JUROR NO. 22: Juror No. 22. Now, you
8 said friends or family in law enforcement or just family?

9 THE COURT: Yes, if you've got close friends.

10 PROSPECTIVE JUROR NO. 22: Okay, well, I actually
11 used to work with the sheriff's office, civil process unit.
12 It's been a handful of years ago. And I do see them from time
13 to time, but it would not affect my ability to be impartial.

14 THE COURT: I'm sorry, your number again?

15 PROSPECTIVE JUROR NO. 22: 22.

16 THE COURT: 22? Thank you.

17 PROSPECTIVE JUROR NO. 22: Absolutely.

18 THE COURT: Yes, sir?

19 PROSPECTIVE JUROR NO. 30: Juror No. 30.

20 THE COURT: Yes?

21 PROSPECTIVE JUROR NO. 30: My father and three uncles
22 were all police officers. But that would not keep me from
23 being fair and impartial.

24 THE COURT: Thank you, sir. Yes, sir?

25 PROSPECTIVE JUROR NO. 41: One friend is a Frederick

1 police officers, two in the Sheriff's Department for Frederick
2 County, and my brother-in-law is a police officer as well. And
3 it wouldn't affect me.

4 THE COURT: And your number?

5 PROSPECTIVE JUROR NO. 41: Oh, sorry. 41.

6 THE COURT: Thank you. Yes, sir?

7 PROSPECTIVE JUROR NO. 42: I'm No. 42. My neighbor
8 down from me, I'm pretty tight with him. He got a job with the
9 State Police in Frederick County. My niece's boyfriend,
10 fiancé, he's also a deputy sheriff and I had a friend who
11 retired from the Frederick City Police. But it would not make
12 me impartial.

13 THE COURT: Thank you.

14 PROSPECTIVE JUROR NO. 28: Juror No. 28.

15 THE COURT: Yes?

16 PROSPECTIVE JUROR NO. 28: My cousin is chief of
17 police and it would not affect my partiality.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR NO. 47: Juror 47.

20 THE COURT: Yes?

21 PROSPECTIVE JUROR NO. 47: My father and grandfather
22 are both federal law enforcement and my boyfriend is a police
23 officer. But I don't think it would affect me.

24 THE COURT: Thank you. Yes?

25 PROSPECTIVE JUROR NO. 49: Juror 49. I have two

1 friends that are state troopers and one cousin that is an out
2 of state police officer. And I don't believe it would affect
3 my judgment.

4 THE COURT: Thank you. Yes?

5 PROSPECTIVE JUROR NO. 40: Juror No. 40. My sister
6 is a State's Attorney, Kristin Brown, and our cousin is a
7 retired police officer. But I don't think it would affect me.

8 THE COURT: Thank you. Juror number?

9 PROSPECTIVE JUROR NO. 1: Juror No. 1.

10 THE COURT: No, no, the last one?

11 PROSPECTIVE JUROR NO. 40: Oh, I'm sorry, 40.

12 THE COURT: Yes, ma'am?

13 PROSPECTIVE JUROR NO. 1: Juror No. 1. My husband is
14 a former deputy sheriff and retired federal law enforcement
15 officer and my father-in-law was a sheriff.

16 THE COURT: Can you be fair?

17 PROSPECTIVE JUROR NO. 1: I believe so, yes.

18 THE COURT: Thank you. Yes, sir?

19 PROSPECTIVE JUROR NO. 43: Juror 43.

20 THE COURT: Yes?

21 PROSPECTIVE JUROR NO. 43: My brother-in-law is a
22 deputy sheriff in Frederick County and it wouldn't affect my
23 judgment.

24 THE COURT: Thank you. All right, we'll start with
25 this young lady.

1 PROSPECTIVE JUROR NO. 26: Juror No. 26.

2 THE COURT: Yes?

3 PROSPECTIVE JUROR NO. 26: Brother-in-law, law
4 enforcement. And I know a bunch of Frederick County cops, but
5 I don't think it would affect my ability to be impartial.

6 THE COURT: Thank you. Gentleman in the back there?

7 PROSPECTIVE JUROR NO. 10: Juror No. 10. I work for
8 the sheriff's department and I have a cousin that works for the
9 sheriff's department.

10 THE COURT: Can you be fair and impartial?

11 PROSPECTIVE JUROR NO. 10: Yes, sir.

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR NO. 50: I'm Juror No. 50. I have
14 a friend that's a PG County police officer, but it wouldn't
15 affect me.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR NO. 39: I'm Juror No. 39. I have
18 a friend who was in the Junior Explorers for the Frederick
19 County Police Department. And I also have another friend who
20 just became some sort of police officer in Baltimore County,
21 but I don't think it would affect me.

22 THE COURT: Yes, ma'am?

23 PROSPECTIVE JUROR NO. 38: Juror No. 38. I have a
24 friend who is the police department. It would not affect my
25 judgment.

1 THE COURT: Thank you. Yes, sir?

2 PROSPECTIVE JUROR NO. 21: Juror No. 21. I have a
3 friend in the Montgomery County Police Department and a friend
4 in the police academy right now, but it would not affect me in
5 any way.

6 THE COURT: Thank you. Yes, sir?

7 PROSPECTIVE JUROR NO. 56: Juror 56. I have a friend
8 that's in the Montgomery County Police Department. It's a
9 specific department that entraps people trying to solicit young
10 ladies online. I'm sure it would not affect my ability to
11 judge fairly.

12 THE COURT: All right. Good. Thank you. Is there
13 any member of the prospective panel who has work experience or
14 specialized training in computers or internet service
15 providers?

16 PROSPECTIVE JUROR NO. 41: Juror No. 41.

17 THE COURT: 41?

18 PROSPECTIVE JUROR NO. 41: Yes.

19 THE COURT: And what would you like to tell us?

20 PROSPECTIVE JUROR NO. 41: I'm a network engineer.
21 I've been one for 22 years.

22 THE COURT: Do you think that would affect your
23 judgment in this case?

24 PROSPECTIVE JUROR NO. 41: I don't think so.

25 THE COURT: Thank you.

1 PROSPECTIVE JUROR NO. 24: Juror No. 24. I'm in
2 technology. (Unintelligible).

3 THE COURT: Thank you. Yes, ma'am?

4 PROSPECTIVE JUROR NO. 36: No. 36. I worked in IT
5 for 29 years.

6 THE COURT: DO you think you can be fair and
7 impartial?

8 PROSPECTIVE JUROR NO. 36: Yes.

9 THE COURT: Okay, thank you. Yes, sir?

10 PROSPECTIVE JUROR NO. 49: Juror 49. I work in
11 corporate IT projects and I have a family member who
12 specializes in IT.

13 THE COURT: Can you be --

14 PROSPECTIVE JUROR NO. 49: I don't believe it would
15 affect my judgment.

16 THE COURT: All right, thank you. Is there any
17 member of the panel who has been the subject of a criminal
18 investigation or a defendant in a criminal or serious traffic
19 case in Maryland or any other state?

20 PROSPECTIVE JUROR: Define serious case.

21 THE COURT: Serious traffic offense? Generally
22 jailable traffic offenses like driving under the influence or
23 driving while suspended or revoked, hit and run, fleeing and
24 eluding.

25 PROSPECTIVE JUROR: Reckless driving?

1 THE COURT: Reckless driving? No.

2 PROSPECTIVE JUROR NO. 24: Juror No. 24. Driving
3 while impaired.

4 THE COURT: Come on up.

5 (Bench conference follows:)

6 THE COURT: Driving while revoked?

7 PROSPECTIVE JUROR NO. 24: No, no, driving while
8 impaired.

9 THE COURT: What is it?

10 PROSPECTIVE JUROR NO. 24: Not a DUI, but the lesser
11 one, DWI.

12 THE COURT: Driving while impaired?

13 PROSPECTIVE JUROR NO. 24: Yes.

14 THE COURT: Okay. Was that in Frederick County?

15 PROSPECTIVE JUROR NO. 24: Yes.

16 THE COURT: And how did that work out?

17 PROSPECTIVE JUROR NO. 24: Nothing major. Alcohol
18 education classes, which I'm almost done with.

19 THE COURT: Probation?

20 PROSPECTIVE JUROR NO. 24: 18 months.

21 THE COURT: Probation before judgment?

22 PROSPECTIVE JUROR NO. 24: Maybe, I don't remember.
23 Possibly. But I'm not in jail, so hopefully that's --

24 THE COURT: Well, that's a good thing. All right.
25 Wouldn't affect your ability to be impartial in this case?

1 PROSPECTIVE JUROR NO. 24: No, I don't see how it
2 relates to this.

3 THE COURT: All right, thank you.

4 PROSPECTIVE JUROR NO. 30: I'm Juror No. 30.

5 THE COURT: Yes?

6 PROSPECTIVE JUROR NO. 30: I have been arrested four
7 times for DWI. But I have been sober since June 6, 1988.

8 THE COURT: '88?

9 PROSPECTIVE JUROR NO. 30: Uh-huh.

10 THE COURT: Very good. Impressive.

11 PROSPECTIVE JUROR NO. 30: Felt like I had to tell
12 you. I don't know if you cross-reference that stuff or not.

13 THE COURT: And was that in Frederick County?

14 PROSPECTIVE JUROR NO. 30: Which one?

15 THE COURT: Any of them?

16 PROSPECTIVE JUROR NO. 30: Actually, no. I never did
17 it here. Anne Arundel, Baltimore.

18 THE COURT: Okay. But that wouldn't keep you from
19 being impartial in this case?

20 PROSPECTIVE JUROR NO. 30: No, sir. No. Not at all.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR NO. 30: All right.

23 THE COURT: Juror No. 10?

24 PROSPECTIVE JUROR NO. 10: Yes, sir. I got a DUI
25 back in 2014.

1 THE COURT: 2014?

2 PROSPECTIVE JUROR NO. 10: Yes, sir.

3 THE COURT: Was that in Frederick County?

4 PROSPECTIVE JUROR NO. 10: No.

5 THE COURT: And do you think that would keep you from
6 being impartial in this case?

7 PROSPECTIVE JUROR NO. 10: No, sir.

8 THE COURT: All right, thank you.

9 PROSPECTIVE JUROR NO. 10: You're welcome.

10 PROSPECTIVE JUROR: Was the question just a
11 conviction?

12 THE COURT: Well, I think the way the question was --

13 MS. CHOI: Subject of investigation.

14 THE COURT: -- framed was have you ever been a
15 defendant or your family?

16 PROSPECTIVE JUROR: Well, so more than 20 years ago I
17 have a PBJ.

18 THE COURT: For?

19 PROSPECTIVE JUROR: DUI.

20 THE COURT: You think that would keep you from being
21 fair and impartial?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Was that in Frederick County?

24 PROSPECTIVE JUROR: It was.

25 THE COURT: Okay. This lady didn't prosecute you,

1 huh?

2 PROSPECTIVE JUROR: No.

3 THE COURT: All right. Thank you very much.

4 PROSPECTIVE JUROR NO. 58: 58. I had two driving on
5 suspended and a DUI about nine years ago.

6 THE COURT: Frederick County?

7 PROSPECTIVE JUROR NO. 58: Two in Frederick County.
8 One suspended was Baltimore County.

9 THE COURT: Would that affect your ability to be
10 fair and impartial?

11 PROSPECTIVE JUROR NO. 58: No, it wouldn't.

12 THE COURT: All right, thank you.

13 PROSPECTIVE JUROR NO. 58: Thank you.

14 THE COURT: No. 34?

15 PROSPECTIVE JUROR NO. 34: Two and a half years ago,
16 driving while intoxicated, probation before judgment, no
17 points, no fines.

18 THE COURT: In Frederick County or elsewhere?

19 PROSPECTIVE JUROR NO. 34: Uh-huh.

20 THE COURT: And you think you can be impartial?

21 PROSPECTIVE JUROR NO. 34: Sure.

22 (Bench conference concluded.)

23 THE COURT: Anyone who has testified as a witness in
24 a criminal case?

25 (No response.)

1 Anyone ever served on a jury? All right, I'll start
2 with that gentleman in the back. You can give your answer back
3 there.

4 PROSPECTIVE JUROR NO. 46: Juror No. 46.

5 THE COURT: Yes?

6 PROSPECTIVE JUROR NO. 46: I did it here. I don't
7 know if it was this courtroom or that one. It's about six
8 years ago.

9 THE COURT: Do you remember what kind of case it was?

10 PROSPECTIVE JUROR NO. 46: Yes, sir. A lady went to
11 a bar for her 30th birthday and pushed a cop. And that's what
12 it was. We were actually in the jury room deliberating, came
13 back the next day and it actually settled out of court.

14 THE COURT: So you don't think that would keep you
15 from being impartial in this case?

16 PROSPECTIVE JUROR NO. 46: No, sir.

17 THE COURT: All right, thank you. Yes, ma'am?

18 PROSPECTIVE JUROR NO. 34: I was on a jury in federal
19 court. It was a contract case. I was an alternate, so I never
20 go to share my opinion.

21 THE COURT: Your juror number?

22 PROSPECTIVE JUROR NO. 34: 34.

23 THE COURT: Thank you. Yes, ma'am?

24 PROSPECTIVE JUROR NO. 4: Juror No. 4. It was the
25 same sort of thing, failure to fulfill a contract and they

1 ended up settling, so we never had to give a verdict.

2 THE COURT: Juror number?

3 PROSPECTIVE JUROR NO. 4: 4.

4 THE COURT: Thank you. Yes?

5 PROSPECTIVE JUROR NO. 27: Juror No. 27. I can
6 barely remember what the case was, but it was in Frederick
7 County and I don't think it would impair my judgment on this
8 case.

9 THE COURT: Thank you. Yes?

10 PROSPECTIVE JUROR NO. 50: When I was 18, I served on
11 a jury panel in Howard County. It was a vehicle accident where
12 one person was saying that the other person caused the accident
13 and was looking for a monetary reward from it. Ultimately we
14 voted against them. And it wouldn't affect my judgment.

15 THE COURT: Thank you very much. Juror number?

16 PROSPECTIVE JUROR NO. 50: 50.

17 THE COURT: 50? Anyone on the panel have any
18 political, religious, or philosophical beliefs about our system
19 of criminal justice which would make you hesitate to sit as a
20 juror? And I'll give you an example of this. There are some
21 people who don't believe they should sit on a jury because they
22 don't believe that they should sit in judgment. It may be
23 partially a religious belief. But some people may be -- well,
24 that's the best example I can probably give you. Anyone have
25 any kind of belief about the system of justice which you don't

1 think would qualify you to be a juror?

2 (No response.)

3 Anyone have any physical or emotional impairment
4 which could affect your ability to listen to and consider all
5 the evidence, including but not limited to hearing issues,
6 vision, speech, physical impairment which could affect your
7 ability to sit for a long period of time? Yes, ma'am? Juror
8 number?

9 PROSPECTIVE JUROR NO. 20: 20.

10 THE COURT: Yes?

11 PROSPECTIVE JUROR NO. 20: I wear hearing aids, but
12 sometimes, unless people speak loud enough, I won't hear what
13 they say.

14 THE COURT: Well, I told you about those hearing
15 devices. We have hearing devices where you can hear a cricket
16 in the back of the courtroom rubbing its legs together. So I
17 think we can accommodate you on that.

18 PROSPECTIVE JUROR NO. 20: All right, great.

19 THE COURT: Yes, ma'am?

20 PROSPECTIVE JUROR NO. 15: I'm Juror No. 15. I have
21 a hearing issue. She's been telling me what you've been
22 saying.

23 THE COURT: Well, we also have a hearing device which
24 you could have. I have a hearing issue, too. And my problem
25 is I can hear everything that people say to me, except I can

1 never hear what my wife says. Yes?

2 PROSPECTIVE JUROR NO. 14: Hearing issues as well.

3 THE COURT: And your number?

4 PROSPECTIVE JUROR NO. 14: 14. And I lost my hearing
5 aid years ago.

6 THE COURT: You what?

7 PROSPECTIVE JUROR NO. 14: I lost my hearing aid
8 years ago.

9 THE COURT: I lost hearing aids, too, and I'm not
10 going to do it again, because they're very expensive. Anybody
11 else?

12 (No response.)

13 This case is about possession of child pornography.
14 And part of the evidence would include images, pictures.
15 Anyone think that you could not decide this case fairly and
16 impartially after viewing the illicit images? Yes? Juror
17 number?

18 PROSPECTIVE JUROR NO. 27: 27.

19 THE COURT: Yes?

20 PROSPECTIVE JUROR NO. 27: I think it would be hard
21 for me. I'm a school teacher -- having been a school teacher
22 for 25 years. To see things like that. It might -- I might not
23 feel impartial about that, having protected children all those
24 years.

25 THE COURT: Juror number?

1 PROSPECTIVE JUROR NO. 27: 27.

2 THE COURT: 27? Thank you, ma'am. Yes?

3 PROSPECTIVE JUROR: I talked to you about this
4 earlier, but as the mother of three grown boys and three
5 grandchildren, I'm not sure. That's the best answer I can give
6 you.

7 THE COURT: Well, that's good enough. Yes?

8 PROSPECTIVE JUROR NO. 14: For the reasons I mentioned
9 earlier.

10 THE COURT: Thank you. That's juror number --

11 PROSPECTIVE JUROR NO. 14: 14.

12 THE COURT: Thank you. Questions, testimony and --
13 oh, I'm sorry. Sir? Number?

14 PROSPECTIVE JUROR NO. 57: 57.

15 THE COURT: Yes, sir?

16 PROSPECTIVE JUROR NO. 57: Three children, nine
17 grandchildren, and two great grandchildren.

18 THE COURT: Congratulations.

19 PROSPECTIVE JUROR NO. 57: I would be -- I would
20 mentally be in conflict with that.

21 THE COURT: Number 57? Yes?

22 PROSPECTIVE JUROR NO. 18: Juror No. 18. I'm a
23 clinical social worker and have worked with children and
24 adolescents for a number of years, as well as young adults.

25 THE COURT: Can you be fair and impartial?

1 PROSPECTIVE JUROR NO. 18: I think so, yes.

2 THE COURT: Thank you. The questions, testimony,
3 instructions, exhibits, statements made in this courtroom will
4 be in the English language. Is there any prospective juror who
5 believes that their understanding and/or use of the English
6 language is so deficient that they would be unable to
7 effectively listen to things that are said in the courtroom and
8 then deliberate with the other jurors?

9 (No response.)

10 Is there anyone on the panel who if you hear
11 testimony from a police officer or other member of law
12 enforcement who would give more or less credibility to the
13 testimony of a police officer than you would as to other
14 civilian witnesses?

15 (No response.)

16 Is there any member of the panel who would allow the
17 thought of any possible punishment of the defendant if
18 convicted to influence your verdict in this case?

19 (No response.)

20 Is there any member of the panel who would be unable
21 to base his or her verdict fairly upon the evidence presented
22 without regard to pity, sympathy, passion or any other
23 emotions?

24 (No response.)

25 Is there any other reason that I have not covered why

1 any juror would not be able to decide this case fairly based
2 upon the evidence and the law?

3 (No response.)

4 The defendant is a South Asian male. Is there any
5 member of the panel who has any prejudices against a South
6 Asian male defendant?

7 (No response.)

8 Everybody know what a whistle blower is?

9 PROSPECTIVE JUROR NO. 25: I have a question.

10 THE COURT: Number?

11 PROSPECTIVE JUROR NO. 25: 25.

12 THE COURT: Yes, sir?

13 PROSPECTIVE JUROR NO. 25: A South Asian male -- is
14 he a legal citizen?

15 THE COURT: I don't know the answer to that. I do
16 not know the answer.

17 MR. MALLIK: U.S. citizen, judge.

18 THE COURT: I'm advised that he is a United States
19 citizen. Everybody knows what a whistle blower is. Anybody
20 ever been involved in a whistle blower case? Yes? Number?

21 PROSPECTIVE JUROR NO. 34: No. 34.

22 THE COURT: And would that in any way affect your
23 ability to be fair and impartial?

24 PROSPECTIVE JUROR NO. 34: I don't think so, no.

25 THE COURT: Thank you. Any member of the panel ever

1 been accused of wrongdoing at your place of employment?

2 (No response.)

3 THE COURT: All right, counsel, would you approach?

4 (Bench conference follows:)

5 THE COURT: Any exceptions to voir dire?

6 MS. KING: Your Honor, I don't believe No. 17 off of
7 the State's voir dire was read.

8 THE COURT: You have any, Ms. Choi?

9 MS. CHOI: I'm just checking, Your Honor.

10 THE COURT: 16? I'm not sure about that question. I
11 mean, if I start down that road, should I ask how many people
12 in here have ever watched pornography?

13 MS. KING: No, no, no. The actual question is strong
14 feelings.

15 MS. CHOI: I believe it was covered in the question
16 about child pornography.

17 THE COURT: I think the child pornography part of it
18 is the important part, not just any pornography. I mean, then
19 we get into as the -- I forget who it was, which Supreme Court
20 Justice -- said I don't know what the definition of pornography
21 is but I know it when I see it. And I think I'm going to pass
22 on that one.

23 MS. KING: Okay.

24 THE COURT: Number 17 --

25 MS. CHOI: Your Honor, may I just note that for the

1 record because of the wording -- and I put in there specific
2 wording about strong feelings because I do believe that people
3 would think that's a gateway if they have strong feelings about
4 general pornography. So I do want to kind of preserve the
5 record in that sense.

6 THE COURT: Okay.

7 MS. CHOI: Thank you.

8 THE COURT: Noted.

9 MS. CHOI: Thank you.

10 (Bench conference concluded.)

11 THE COURT: Number -- hold on one second, I'll be
12 right with you. The burden of proof as I mentioned before is
13 beyond a reasonable doubt. The State has the burden of proof.
14 They have to prove the defendant's guilt beyond a reasonable
15 doubt and to a moral certainty. Now, that is not -- that
16 doesn't mean proof beyond all possible doubt, and it doesn't
17 mean proof to a mathematical certainty. Is there anyone on the
18 panel who feels that the State should have to prove the
19 defendant's guilt beyond all doubt or to a mathematical
20 certainty?

21 (No response.)

22 Thank you. Gentleman in the back?

23 PROSPECTIVE JUROR NO. 56: May I approach?

24 THE COURT: Yes.

25 (Bench conference follows:)

1 THE COURT: Number?

2 PROSPECTIVE JUROR NO. 56: Number 56.

3 THE COURT: Yes, sir?

4 PROSPECTIVE JUROR NO. 56: I only bring this up
5 because Kim downstairs said that I should before you selected a
6 jury. If I were to be selected to serve on this jury, it would
7 be an extreme hardship on me and my family. I am a self-
8 employed sole employee of the corporation and I have been happy
9 to give up one day of my time to serve on a jury. If it were a
10 three day trial, however, figuring tomorrow being the first of
11 three --

12 MS. KING: Today is the first of three.

13 PROSPECTIVE JUROR NO. 56: Today is the first of
14 three -- well, whichever the case may be, it will be very
15 difficult and a financial burden on me and my family. And Kim
16 said that I should mention that to you.

17 THE COURT: Anyone want to respond?

18 PROSPECTIVE JUROR NO. 56: And so that's why I'm
19 bringing it up.

20 THE COURT: All right, I'm going to excuse you, but
21 just have a seat until --

22 PROSPECTIVE JUROR NO. 56: No worries. I'll just lay
23 low.

24 THE COURT: Okay, very good.

25 PROSPECTIVE JUROR NO. 56: Thank you.

1 (Bench conference concluded.)

2 THE COURT: This case is anticipated to last for
3 three days, including today. Is there anyone who feels you
4 could not serve for that length of time based upon some
5 hardship or other difficulty? Yes?

6 PROSPECTIVE JUROR NO. 39: 39. Tomorrow is my
7 brother's high school graduation.

8 THE COURT: Your brother?

9 PROSPECTIVE JUROR NO. 39: Yes.

10 THE COURT: Are you sure he's going to graduate? And
11 what time is that? It's in the evening, isn't it?

12 JUROR NO 39: 4:00, I think. 4:00 or 5:00.

13 THE COURT: 5:00?

14 PROSPECTIVE JUROR NO. 39: It sometime in the late
15 afternoon or early evening. So I don't know.

16 THE COURT: Well now if it was your husband's
17 graduation, I might feel -- no, I'm -- I'll take that under
18 advisement.

19 PROSPECTIVE JUROR NO. 39: Okay.

20 THE COURT: Yes?

21 PROSPECTIVE JUROR NO. 15: I'm a caregiver of my two
22 little great-grandsons, and it's really -- my granddaughter
23 doesn't have anybody that she can fall back on to babysit. So
24 it would really be a hardship for me.

25 THE COURT: Thank you.

1 PROSPECTIVE JUROR NO. 15: And I'm No. 15.

2 THE COURT: 15? Lady by the wall?

3 PROSPECTIVE JUROR NO. 13: No. 13. My nine year old
4 daughter has an appointment that we've been waiting six weeks
5 for.

6 THE COURT: A medical appointment, or --

7 PROSPECTIVE JUROR NO. 13: Yes.

8 THE COURT: 13?

9 PROSPECTIVE JUROR NO. 31: 31. I have a work
10 commitment at 3:30.

11 THE COURT: Say that again?

12 PROSPECTIVE JUROR NO. 31: I have a work commitment
13 for the next two or three days starting at 3:30.

14 THE COURT: Thank you. Yes?

15 PROSPECTIVE JUROR NO. 14: Juror 14. I have to be
16 out by 5:15 to pick up my daughter from daycare.

17 THE COURT: 5:30?

18 PROSPECTIVE JUROR NO. 14: 5:15.

19 THE COURT: Thank you. All right, counsel would you
20 approach?

21 (Bench conference follows:)

22 THE COURT: Everybody decided on their peremptory
23 challenges?

24 MS. KING: Yes, Your Honor.

25 MS. CHOI: How many do we have, Your Honor? Is it

1 four? Four each? Okay.

2 MS. KING: State goes first? Are we going to just do
3 it up here?

4 THE COURT: No, no, we'll call them up, and then one
5 by one, you can say who you want us to excuse. I'll just ask
6 each side whether the juror is acceptable --

7 MS. KING: Thank you, Your Honor.

8 THE COURT: All right.

9 (Bench conference concluded.)

10 THE COURT: All right, when your number is called,
11 please come forward, stand facing the defendant, and you'll be
12 told by the attorneys, the State and the defense, whether or
13 not you're acceptable. If they exercise a peremptory
14 challenge, then what you should do is just go back to your seat
15 and remain seated. All right?

16 THE CLERK: Juror No. 1?

17 MS. KING: State goes first?

18 THE CLERK: Yes.

19 MS. KING: Please seat the juror.

20 THE COURT: Defense?

21 MS. CHOI: Please excuse the juror.

22 THE COURT: Acceptable to the State and the defense
23 wants to excuse this juror?

24 MS. CHOI: Yes, Your Honor.

25 THE COURT: All right, thank you, ma'am.

1 THE CLERK: Juror No. 2?
2 MS. CHOI: Please excuse the juror.
3 THE CLERK: Juror No. 3?
4 MS. KING: Please excuse the juror.
5 MS. CHOI: Please seat the juror.
6 THE COURT: Well, wait until he gets up here.
7 MS. KING: I was saving them the walk.
8 THE CLERK: State?
9 MS. KING: Please excuse the juror.
10 THE COURT: All right, thank you, sir.
11 THE CLERK: Juror No. 4? Defense?
12 MS. CHOI: Please excuse the juror.
13 THE CLERK: Juror No. 5?
14 MS. KING: Please seat the juror.
15 THE CLERK: Defense?
16 MS. CHOI: Please seat the juror.
17 THE COURT: Wait a minute -- acceptable to the State?
18 MS. KING: Yes.
19 THE COURT: Bring your belongings with you when you
20 come.
21 THE CLERK: Juror No. 7? State?
22 MS. KING: Please seat the juror.
23 THE CLERK: Defense?
24 MS. CHOI: Please seat the juror.
25 THE COURT: Let me make something clear here.

1 Counsel, don't say anything until they get up here. You're
2 going to be seated. Bring your belongings with you.

3 THE CLERK: Juror No. 9?

4 THE COURT: Now, come on up, sir, turn, face the
5 defense table -- up here. Up here. This side. There you go.
6 Now.

7 THE CLERK: Defense?

8 MS. CHOI: Please seat the juror.

9 MS. KING: Please thank and excuse the juror.

10 THE COURT: Thank you, sir.

11 THE CLERK: Juror No. 10? State?

12 MS. KING: Please seat the juror.

13 THE CLERK: Defense?

14 MS. CHOI: Please excuse the juror.

15 THE CLERK: Juror No. 11? Defense?

16 MS. CHOI: Please excuse the juror.

17 THE COURT: Excuse?

18 MS. CHOI: Yes, please.

19 MS. KING: And Madam Clerk, that's four strikes for
20 the defense and I have one more strike?

21 THE CLERK: Yes.

22 MS. KING: Thank you.

23 THE CLERK: Juror No. 12?

24 MS. KING: Please seat the juror.

25 MS. CHOI: Please seat the juror.

1 THE CLERK: Juror No. 13? Defense?

2 MS. CHOI: Please seat the juror.

3 THE CLERK: State?

4 MS. KING: Please seat the juror.

5 THE CLERK: Juror No. 14? State?

6 MS. KING: Please seat the juror.

7 THE CLERK: Defense?

8 MS. CHOI: I would like to excuse the juror for
9 cause.

10 THE COURT: You've used your challenges.

11 MS. CHOI: I've used my challenges, Your Honor.

12 THE COURT: Yes, okay, so the State gets the call on
13 the rest of these. You have one left, I believe?

14 MS. KING: Yes, Your Honor. Please seat the juror.

15 THE COURT: Ma'am, have a seat in the box, please.

16 Bring your stuff with you.

17 THE CLERK: Juror No. 15? State?

18 MS. KING: And Your Honor, if I may inquire? I know
19 that Juror No. 15 indicated a hardship. I didn't know if Your
20 Honor was going to rule on that at this time or --

21 THE COURT: We'll excuse Juror No. 15. You can have
22 a seat, ma'am, in the gallery.

23 PROSPECTIVE JUROR NO. 15: I'm sorry?

24 THE COURT: You can have a seat back there.

25 THE CLERK: Juror No. 16? State?

1 MS. KING: Please seat the juror.

2 THE COURT: You can have a seat in the box, ma'am.

3 THE CLERK: Juror No. 17?

4 MS. KING: Please excuse the juror.

5 THE COURT: Thank you, sir.

6 THE CLERK: Juror No. 18?

7 THE COURT: I believe all peremptories have now been
8 exhausted. Have a seat in the box, please.

9 THE CLERK: Juror No. 19?

10 THE COURT: You can have a seat in the box, ma'am.

11 THE CLERK: Juror No. 20?

12 THE COURT: You can have a seat in the box, ma'am.

13 THE CLERK: Juror No. 21?

14 THE COURT: You can have a seat in the box, sir.

15 THE CLERK: Juror No. 22?

16 THE COURT: You can have a seat in the box.

17 THE CLERK: Juror No. 24?

18 THE COURT: Have a seat in the box, sir. All right,
19 now, we're going to pick two alternates.

20 THE CLERK: Juror No. 25?

21 THE COURT: Have a seat in the box, sir.

22 THE CLERK: Juror No. 26?

23 THE COURT: Have a seat in the box. Now, counsel, if
24 you'd approach?

25 (Bench conference follows:)

1 THE COURT: Challenges for cause as to anyone seated
2 in the box?

3 MS. CHOI: I think it's -- I don't remember the
4 number.

5 (Unintelligible)

6 MS. CHOI: Yes, could we deal with that first? I
7 think some of them had hardships.

8 THE COURT: Which ones?

9 MS. CHOI: 13 and 14.

10 THE COURT: The last two? Are you talking about
11 The --

12 MS. CHOI: Juror Nos. 13 and 14.

13 THE COURT: 13 is in which seat?

14 MS. CHOI: 5 and 6. Is that right?

15 THE COURT: I'm sorry, seat No. 5? Juror No. 14,
16 come up to the bench, please. You indicated you had a
17 hardship?

18 PROSPECTIVE JUROR NO. 14: Yes.

19 THE COURT: Which is?

20 PROSPECTIVE JUROR NO. 14: I believe someone in my
21 family has been sexually assaulted and it would be very hard
22 for me.

23 MS. CHOI: A scheduling hardship?

24 PROSPECTIVE JUROR NO. 14: I'm sorry?

25 MS. CHOI: The scheduling hardship?

1 PROSPECTIVE JUROR NO. 14: Oh, that's after 5:30.

2 THE COURT: 5:30?

3 PROSPECTIVE JUROR NO. 14: And my husband is in War
4 College in New Hampshire, so I cannot -- my husband is in New
5 Hampshire until the end of June --

6 THE COURT: You need to leave here by 5:30?

7 PROSPECTIVE JUROR NO. 14: Yes.

8 THE COURT: Well, we can accommodate that. But are
9 you saying that because of some prior experience that you have
10 a problem?

11 PROSPECTIVE JUROR NO. 14: That's what I was trying
12 to say earlier. Was I not clear? My family member was I
13 believe assaulted. But there was no --

14 THE COURT: I have a question mark beside Juror No.
15 14's name based upon her response here at the bench.

16 MS. CHOI: Right. I have question marks because it
17 was her sister. It was her sister and it was unreported, and
18 so she seemed a bit upset about it.

19 THE COURT: All right. We can accommodate your
20 scheduling.

21 MS. CHOI: Was she asked whether she could be fair
22 and impartial?

23 PROSPECTIVE JUROR NO. 14: And I don't know if I
24 could be.

25 MS. CHOI: Because I didn't put my answer on there.

1 MS. KING: She said, no, she couldn't be.

2 THE COURT: All right, I'll excuse Juror No. 14. You
3 can have a seat.

4 (Bench conference concluded.)

5 THE CLERK: Juror No. 27?

6 (Discussion off the record.)

7 THE COURT: Juror No. 13?

8 (Bench conference follows:)

9 THE COURT: You have an appointment?

10 PROSPECTIVE JUROR NO. 13: My daughter has an
11 appointment. We've waited six weeks for it.

12 THE COURT: And that's scheduled for tomorrow?

13 PROSPECTIVE JUROR NO. 13: Uh-huh.

14 THE COURT: At what time?

15 PROSPECTIVE JUROR NO. 13: At 2:00.

16 THE COURT: 2:00? All right, I'm going to excuse
17 this juror. Just have a seat in the aisle.

18 PROSPECTIVE JUROR NO. 13: Okay, thank you.

19 MS. KING: I think those are all the hardships.

20 (Bench conference concluded.)

21 THE COURT: All right, call the next juror.

22 THE CLERK: Juror No. 28?

23 THE COURT: All right. Now, can you call the numbers
24 of the jurors that are seated in the box?

25 THE CLERK: Yes. Juror No. 5.

1 THE COURT: One.
2 THE CLERK: Juror No. 7.
3 THE COURT: Two.
4 THE CLERK: Juror No. 12.
5 THE COURT: Three.
6 THE CLERK: Juror No. 27.
7 THE COURT: Four.
8 THE CLERK: Juror No. 16.
9 THE COURT: Wait a minute, who is No. 28? All right,
10 28 is four. This is Juror No. 5? I can't read it.
11 THE CLERK: 16.
12 THE COURT: 6?
13 PROSPECTIVE JUROR NO. 16: 16.
14 THE COURT: You're now Juror No. 6. Number 7?
15 PROSPECTIVE JUROR NO. 19: 19.
16 THE COURT: Eight.
17 THE CLERK: 20.
18 THE COURT: Nine.
19 PROSPECTIVE JUROR NO. 21: 21.
20 THE COURT: Ten.
21 PROSPECTIVE JUROR NO. 22: 22.
22 THE COURT: 11.
23 PROSPECTIVE JUROR NO. 24: 24.
24 THE COURT: 12.
25 PROSPECTIVE JUROR NO. 25: 25.

1 THE COURT: 13.

2 PROSPECTIVE JUROR NO. 26: 26.

3 THE COURT: 14. All right, ladies and gentlemen,
4 remember, there are three reasons why you were not picked --
5 peremptory challenge -- you heard the attorneys exercise those
6 peremptory challenges. We had some challenges for cause and
7 then some people we just didn't get to. So we have our jury.
8 Those of you who were not selected, I want to thank you for
9 participating today. And you are excused with the Court's
10 gratitude. Thank you.

11 (Discussion off the record.)

12 THE COURT: Members of the jury, what I'm about to
13 say is a brief general introduction to this trial so that you
14 will be better able to perform your important duty of deciding
15 the facts diligently and conscientiously. The prosecutor and
16 the defense attorney may choose to make opening statements.
17 Opening statements are not evidence. They are only statements
18 of what the lawyers expect the evidence will be.

19 At times during the trial, the lawyers may make
20 objections, and I will rule on them. Do not concern yourself
21 with these objections or my rulings on them. You as jurors
22 must decide this case based solely on the evidence presented in
23 this courtroom.

24 It's the duty of lawyers to make objections which
25 they feel are proper. These objections are usually argued at

1 the bench out of the hearing of the jury. Your function is to
2 decide the facts. The judge, in this case me, is the person
3 who decides the law.

4 Don't conduct any research or investigation about the
5 case or the individuals involved in it. You may not consult
6 any dictionaries or reference materials or search the internet,
7 websites, blogs, or any other source for information about the
8 case or the persons involved in the case.

9 You must not visit any place related to the case.
10 You also must not seek any information about the place or
11 location on the internet through websites such as MapQuest or
12 Google Maps.

13 Until you retire to deliberate and decide this case,
14 you may not discuss this case with anyone, even your fellow
15 jurors. You should not express any opinion about the case or
16 discuss the case with anyone, including courtroom personnel,
17 spectators, or anyone participating in the trial.

18 Many of you use cell phones, smart phones, or other
19 electronic devices to communicate with family, friends or co-
20 workers. During this trial, you must not communicate any
21 information or opinions about this case or the individuals
22 involved in it by any method to anyone, including by sending
23 electronic messages.

24 You may also be involved in social media or
25 networking sites such as Facebook, MySpace, LinkedIn, YouTube,

1 or Twitter. And you may be accustomed to communicating on
2 these sites. During this trial, you must not communicate
3 anything or receive any information about this case. You
4 should not allow anyone to talk to you or communicate with you
5 about the case. Outside the courtroom, avoid parties in the
6 case, the lawyers, and the witnesses. Do not read, watch, or
7 listen to any media reports about the case such as newspaper,
8 television, radio, or internet reports. Do not visit any
9 internet sites where there may be reports or discussion of the
10 case.

11 Relying on information from any other source outside
12 the courtroom, including social media sources, is unfair
13 because the parties do not have the opportunity to refute,
14 explain, or correct it. And the information may be inaccurate
15 or misleading.

16 You must base your decision only on the evidence
17 presented in this courtroom. If anyone tries to communicate
18 with you about the case or if you learn of any information
19 during the trial that is not part of the evidence presented in
20 this courtroom, or that violates the rules I have just
21 explained, please write me a note and give it to the bailiff as
22 soon as possible and do not discuss it with anyone else.

23 Each of you has been given a note pad to be used if
24 you wish to take notes during the trial. Please write your
25 name and nothing else -- I'm going to change that -- please

1 write your juror number, the new number that you have now -- 1,
2 2, 3, et. cetera -- on the first page and nothing else. At
3 the end of the day, the bailiff will collect the notepads and
4 no one will be permitted to read them. Any notes you take are
5 only to help you remember and are not evidence. Please do not
6 let note taking interfere with watching and listening to the
7 witnesses.

8 Do not discuss this case with anyone or let anyone
9 discuss this case with you or in your presence. This includes
10 other jurors, courtroom personnel, friends, relatives, or
11 anyone else. In addition, you should avoid any contact with
12 the parties, witnesses and lawyers involved in this case.

13 Do not express any views, comments or opinions about
14 the case to anyone. If anyone tries to discuss this case with
15 you, or if you learn that my instructions are not being
16 followed, please write me a note and give it to the bailiff as
17 soon as possible and do not discuss it with anyone else.

18 Now, question, anyone need a break?

19 (No response.)

20 Everyone good to go? All right. Now, ladies and
21 gentlemen, your role is to decide the facts in the case. There
22 are certain factors which I will explain to you later which you
23 can consider in evaluating the testimony and credibility of
24 witnesses. However, you are the sole fact finders in this
25 case. All right? I will instruct you at the end of the case

1 as to the law in the case. And you are required in evaluating
2 the evidence to apply the law as I explain it to you to the
3 facts in this case. But you are the sole fact finders.
4 Anything that I say in this case should not in any way
5 influence you as you deliberate on the facts. You shouldn't
6 judge from my rulings in the case that I favor one side or
7 another or that I believe or disbelieve any witness in the
8 case. You are the sole fact finders. It's a very important
9 function and when the case is over, after you have heard
10 opening statements, all the testimony and evidence, and closing
11 arguments and my instructions, then and only then are you to
12 discuss this case with your fellow jurors.

13 THE COURT: Madam State?

14 MS. KING: Thank you, Your Honor.

15 THE COURT: Oh -- Madam Clerk, sorry -- we need to
16 swear you in.

17 THE CLERK: Ladies and gentlemen of the jury, please
18 stand and raise your right hand.

19 Do each of you solemnly promise and declare you shall
20 well and truly try and true deliverance make between the State
21 of Maryland and Abe Mallik, now defendant at the bar, whom you
22 shall have in charge and a true verdict give according to the
23 evidence? Ladies and gentlemen of the jury, are you sworn? If
24 so, please respond I am.

25 THE JURY: I am.

1 THE CLERK: Thank you. You may be seated.

2 MS. KING: Thank you, Your Honor.

3 OPENING STATEMENT BY JOYCE KING, ESQ.

4 ON BEHALF OF THE STATE

5 Ladies and gentlemen of the jury, this is a case
6 about the possession of child pornography. Throughout this
7 case, you will hear the State's witnesses refer to child
8 pornography as CP or images of child exploitation out of
9 respect for the children in these images. These are images of
10 children in sex acts, being sexually abused. That is why it's
11 illegal. It's illegal to possess these images.

12 You will see these photographs, and they will be
13 disturbing. You will hear testimony that will make you
14 uncomfortable. The testimony may sometimes also be technical.
15 But the facts of this case are simple. The facts of this case
16 is that the defendant, Abe Mallik, possessed 11 images of child
17 pornography. The State will call Detective Jason Snyder from
18 the Frederick County Sheriff's Office. He'll explain to you
19 that on March 3, 2016, the defendant e-mailed himself eight
20 images of child pornography. That e-mail generated what's
21 called a cyber tip or notification to the National Center of
22 Missing and Exploited Children, who then contacted local
23 authorities to further investigate, which they did.

24 What did they find? They found business record from
25 Comcast, Google, Yahoo, that certified that the accounts that

1 e-mail was generated from and went to did in fact belong to the
2 defendant, Abe Mallik. They also verify another fact, an IP
3 address. And for those of you that are not technical, an IP
4 address is a location from where an account is accessed. And
5 these accounts were accessed on March 3rd at the defendant's
6 residence, here in Frederick County.

7 On April 21, 2016, a search warrant was conducted at
8 that residence here in Frederick County and several devices and
9 electronic storage devices, laptops, were seized. Detective
10 Snyder will first tell you that in addition to those records
11 that he located, that the defendant had a program, a virtual
12 private network called HideMyAss. And that e-mail was sent
13 using HideMyAss. And that program, HideMyAss was registered to
14 the defendant and that IP address, although attempted to be
15 hidden, was actually the defendant's residence.

16 The State will call forensic examiner Steven Gibson.
17 He is a forensic examiner with Homeland Security. He conducted
18 a search of the equipment that was taken from the defendant's
19 home. And he'll tell you that he found three additional images
20 of child pornography on the defendant's laptop. He will
21 explain to you where these images were saved, how these folders
22 were manually created, how he could tell that these images were
23 viewed by the operator, and that these folders were actually
24 part of a most recently used set of files.

25 Mr. Gibson will also tell you that in addition to

1 these images of child pornography, contained in those folders
2 were dozens and dozens of images of children in various stages
3 of clothing, which he will explain to you is customary when
4 searching for child pornography.

5 Ladies and gentlemen, after you hear the testimony
6 and see the evidence, there will be no question, there will be
7 no excuse, no explanation. There will be only the simple
8 truth. The simple fact that the defendant, Abe Mallik,
9 possessed child pornography. And at the conclusion of this
10 trial, I'm going to come back up here and ask you to find him
11 guilty of all 11 counts.

12 THE COURT: Ms. Choi?

13 OPENING STATEMENT BY SUN E. CHOI, ESQ.

14 ON BEHALF OF THE DEFENDANT

15 Ladies and gentlemen of the jury, thank you very much
16 for your time. I understand that it's valuable and precious
17 and I really appreciate that you're here. It's not as simple
18 as the State wants you to believe it is, because you will hear
19 from various witnesses from the defense that beginning in 2014,
20 Mr. Mallik was actually a victim of racial discrimination from
21 his employment, his workplace. He had to sue the federal
22 government. And pursuant to that lawsuit, he actually received
23 \$51,000 in a settlement in which he was a whistle blower,
24 essentially.

25 And since that date, 2014, he still continues to work

1 at the same place, but a different division. And immediately
2 after that settlement of a lawsuit labeling him a whistle
3 blower, he continued to get problems and issues. Fast forward
4 a little bit into 2016. For the two years between the
5 settlement of his lawsuit in which they admitted there was
6 racial discrimination, and he's still working for that same
7 location, in 2016, on February 11, 2016, he couldn't take it
8 anymore. He decided that he had to say something again with
9 regard to the demeaning and abusive nature in which his
10 immediate supervisor was treating him.

11 So again, he had to file a complaint. And when he
12 did that, the very next day, on February 12, 2016, he noticed
13 that his internet connection was incredibly sluggish and very,
14 very slow. It's that time when you're trying to upload
15 something or even connect to the internet and it's just not
16 working and you're doing everything in your power. And you'll
17 hear from Mr. Mallik, who will testify, and look you in the eye
18 and say he's never been charged, never been convicted, never
19 been arrested, but yet he's charged here today.

20 That internet connection just did not connect on
21 February 12th. And therefore, he called Comcast to find out
22 what's going on. And you'll see the verified records from
23 Comcast's account notes saying that he actually called and
24 complained about the internet speed.

25 And at that time, the State would have you believe

1 that on March 3rd, which is a very critical date -- and
2 throughout this entire case, the dates are very critical.
3 Because the February 11th date is when Mr. Mallik actually
4 complained about his immediate supervisor. February 12th is
5 when he started noticing the slow internet connection. Then we
6 have March 3rd that the State says were when the uploads of
7 these alleged child pornography took place. And their theory
8 is that he was able to connect to a software, a virtual private
9 network in which he used their location IP address and uploaded
10 those images, trying to hide and mask himself.

11 What you will hear from the State's own expert,
12 Steven Gibson in his report, that software wasn't installed
13 until March 23rd, because Mr. Mallik didn't have the computer,
14 the Acer laptop, until March 21st. So the State cannot tell
15 you where these eight images came from. They cannot tell you
16 the source. They didn't tell the defense where the source of
17 these images came from. All of a sudden, it appears as an
18 attachment to Mr. Mallik's e-mail.

19 Mr. Mallik, from day one, provided a voluntary
20 interview to the detectives, willingly provided information --
21 even brought to the interview after the raid of his home on
22 April 21st, where they took 27 devices. Every single
23 electronic thing you can possibly think of -- camcorders,
24 cameras, thumb drives, back up disks, computers, iPhones,
25 tablets -- every single thing that was electronic was seized

1 from his home, 27 of them.

2 And out of the 27 devices, not a single one had the
3 alleged child pornography except for the brand new Acer laptop
4 that he purchased on March 21st. That program that Mr. Mallik
5 installed on March 23rd, according to the State's forensic
6 expert, and not any earlier. You're going to hear from the
7 defense's expert, who is going to testify that he's familiar
8 with that software. Because when you have an internet
9 connection that is sluggish -- an as a lay person who is not
10 very technical -- I know I'm not -- you'd switch it on and off,
11 you'd call Comcast, you'd try and figure out what's going on
12 with the internet connection. That's the logical thing to do.

13 He did all of that before any images were uploaded.
14 And he thought to himself, wait, I'm banking online, I've got a
15 14 year old -- I need to figure out how to hide my network
16 because in early February, right before he filed a complaint
17 about his employer, he found a foreign device on his home Wi-Fi
18 network. It was called Living Room. So he talked to everybody
19 in his family -- do we have a new device I don't know about?
20 None of them had a new device. And that foreign device would
21 not be kicked off. He did everything in his power. Nothing
22 happened.

23 Therefore, he went on Google and searched what can I
24 do to hide my home Wi-Fi network? The first thing that popped
25 up was the virtual private network that he purchased. He

1 purchased it on February 9th. That didn't get installed until
2 March 23rd. The uploads of the alleged child porn happened on
3 March 3rd.

4 Ladies and gentlemen, this case is not about
5 knowingly possessing child pornography. This case is actually
6 about whether or not Mr. Mallik was the victim of a hack, and
7 whether there was a security breach. Was there somebody that
8 had the motive, that had the opportunity -- because Mr. Mallik
9 works from home. He telecommutes. His employers know exactly
10 where he is. They are actually the ones who give him the
11 devices and basically categorizes all of the devices, and
12 they'll testify to all of that. They know every single thing
13 that he owns, exactly where he works, and that timeline is
14 really what's critical.

15 Because the State wants you to believe that it's so
16 cut and dry. Mr. Mallik is not going to sit here and tell you
17 that's not my e-mail address. That's my e-mail address. He's
18 going to look at you in the eye, every single one of you, and
19 tell you I've never been arrested, never been charged, I did
20 not knowingly possess or possess not knowingly any of those
21 images. Because he'll testify he has a 14 year old daughter
22 who is precious to him, and he will testify and tell you how
23 repulsed he is.

24 So despite the risks involved in going to trial,
25 we're here today. This man is fighting for his life, and

1 that's what he's going to tell you.

2 Ladies and gentlemen of the jury, it would sound a
3 little bit inconceivable that somebody might hack into your
4 system and get you in trouble. But in this particular
5 situation, in this set of facts, all of the evidence will point
6 to that. Mr. Mallik didn't own his Acer laptop which has the
7 virtual private network software installed in it. None of the
8 other devices have it. So in order for him to actually upload
9 these images on March 3rd, he must have had that software,
10 because the IP address, the location of the upload, is in
11 Ashburn, Virginia. That's where the software company has its
12 IP address. And you will see it from Google's logs, certified
13 logs. You'll see it from the National Center for Missing and
14 Exploited Children. And you will see exactly where these
15 uploads took place, and it wasn't his home. It wasn't on his
16 computer. It wasn't on a computer that he owned that had the
17 virtual private network software.

18 The expert that the defense has is a neighbor. He
19 happens to be someone in the IT field with over 20 years of
20 experience doing exactly this. He's not a forensic computer
21 analyst. But he is an expert in hacking, in vulnerabilities of
22 routers, and he will tell you how cybersecurity is so easily
23 breached.

24 And during the course of this investigation --
25 because this is what the defendant feels like he has to do is

1 to prove his innocence -- not that he is innocent until proven
2 guilty, but he felt as if, based on the evidence, and the
3 allegations made against him, that he was already guilty and
4 had to prove his innocence. And during that time, the defense
5 expert will testify and the State will stipulate that the
6 router that allows Mr. Mallik to connect to the internet was
7 involved in a lawsuit for two years, starting in 2014, an
8 ultimately from FTC where they charged the Asus router company
9 that there is a major known vulnerability with all of their
10 routers.

11 And in fact on February 23, 2016, Asus admitted that
12 in fact there were known vulnerabilities in that Asus router
13 and they settled for \$206 million and a contractual promise to
14 be independently audited for the next 20 years because of that
15 breach.

16 These dates are critical because all of a sudden, you
17 cannot have child pornography originate out of nowhere.
18 There's got to be a source. There is no source here. Those
19 eight images that were attached to a Gmail account, please ask
20 yourself, where did they come from? Where?

21 Our expert is going to be able to tell you and
22 explain to you what it means to be hacked, what phases of
23 hacking occurs. And what the State did in terms of trying to
24 analyze these computers. Now, one crucial fact that you are
25 going to hear from Mr. Mallik is his 14 year old daughter has

1 access to this exact same computer, the Acer laptop where the
2 alleged three images of child pornography was found. And she
3 is 14 years old. She visits fanfiction.com and wattpad.net and
4 these are essentially like an anime, storytelling kind of
5 internet site. And the facts will be that she accidentally
6 clicked on various inappropriate ads and she actually told that
7 to the officer at the day of the raid. And I saw these pop
8 ups, and I knew they were inappropriate and I just closed them
9 out right away.

10 Within three days, when Mr. Mallik ran a scan of all
11 of the malware and unwanted programs on this brand new
12 computer, he came up with over 200 of them. 200 plus. He then
13 decided to run it on his mother-in-law's computer. She had
14 915. So he didn't think he was that bad. So he bought a
15 Malwarebytes software, which cleans out the entire computer,
16 and takes out all the unwanted programs, whatever it is. Some
17 are just actually loaded as you buy it.

18 So he ran this program on March 26th. Now, the
19 State, their theory is that three of those images had to fall
20 specifically on the dates after that period of time when that
21 computer was cleaned and scrubbed from all the malware, because
22 they're saying that he locally opened up his computer, saw
23 these images, left traces of that evidence.

24 However, that's not so. He cleaned and scrubbed and
25 wiped that computer through that premium Malwarebytes software

1 on March 26th. They seized that computer on April 21st. So
2 they are trying to locate the dates that would fit very nicely
3 into a package.

4 And as you hear from Mr. Mallik himself, and he tells
5 you these are all the steps that I took because one, my
6 employer, my immediate supervisor who ironically the day after
7 the raid suspends him from his employment -- he has not been
8 back to work since April 22, 2016. This man is the sole
9 breadwinner, fighting for his life, taking a big risk -- and
10 he'll tell you that -- every single one of you, that this is
11 not who he is. He wants to be heard. And the evidence is very
12 clear, not just from the defense side, but also from the State
13 side. It's their certified records where we can point to and
14 say February 12th, Mr. Mallik calls Comcast and says there's a
15 big problem. May 17th, he comes to Detective Elrod, the lead
16 detective at the time, and gives him the dead router. Here's
17 my Asus router. I had internet problems. Can you please help
18 me investigate? Not a single thing happened until the eve of
19 trial, where they started following up on whether or not maybe
20 Mr. Mallik had a point.

21 That's where we are. This is an incredibly complex
22 case. It's not as simple and clear cut, because there is
23 motive, there is opportunity, and Mr. Mallik will testify under
24 oath and let you all know exactly why he's where he is. So at
25 the end of all of the evidence, I hope that you ask yourself is

1 there some doubt here? Is there really some doubt here?

2 Because if there is, you can't convict.

3 Thank you.

4 THE COURT: Ms. King?

5 MS. KING: Your Honor, if we could approach? I
6 believe that we have some stipulations that we can address
7 preliminarily.

8 (Bench conference follows:)

9 MS. KING: At the pretrial conference we informed
10 assignment that we wouldn't start calling witnesses until
11 tomorrow morning. So for the balance -- the remainder of this
12 day, we can do the stipulations and then probably we can let
13 the jury go, because we have to go through that packet and come
14 up with --

15 THE COURT: Okay.

16 MS. KING: These are the stipulations --

17 MS. CHOI: Do you have an extra copy by chance?

18 THE KING: No, I don't. But if Your Honor wants
19 to -- we can have this marked as State's Exhibit -- actually
20 I'll just mark it right now. We can mark this as State's
21 Exhibit 1.

22 (Bench conference concluded.)

23 MS. KING: And just for the record, these are
24 stipulations by both parties to State's Exhibit 1, 2, 3. This
25 is a chain of custody inventory sheet, photographs, as well as

1 the cyber tip.

2 MS. CHOI: With regard to one of the items, there was
3 a typo.

4 MS. KING: Okay. I don't know if you wanted to read
5 the stipulations to the jury.

6 THE COURT: All right, ladies and gentlemen, the
7 parties have stipulated to certain exhibits, that is, they have
8 agreed that these exhibits are admissible and stipulations --
9 and I don't know, there may be other stipulations during the
10 course of the trial. Sometimes counsel may stipulate as to
11 what a certain witness may testify without the necessity of
12 calling the witness. Or they may stipulate to certain facts.
13 In this case, they have stipulated as to the chain of custody
14 and inventory sheet. That would -- excuse me -- and those
15 items have been marked State's Exhibit 1, cyber tip line
16 report, 8588030, priority level E, report submitted by
17 registered electronic service provider.

18 This exhibit has been admitted into evidence by
19 stipulation of the parties, or by agreement of the parties.
20 And you'll get a copy of this exhibit when you go back to
21 deliberate, as with all exhibits.

22 Exhibit 2 is chain of custody as to certain items
23 that were seized by law enforcement and the chain of custody is
24 essentially the way of showing that an item of evidence that
25 was taken by the police has remained in police custody. That

1 is, that it has been kept somewhere where it could not be
2 altered or changed or tampered with. That is Exhibit 2.

3 Exhibit 3 consists of photographs of certain items
4 that were taken into police custody pursuant to a search and
5 seizure warrant.

6 Counsel, I have here a number of photographs. Are
7 they marked collectively?

8 MS. KING: Just collectively as a packet, Your Honor.

9 MS. CHOI: Yes, Your Honor.

10 THE COURT: As what? Exhibit 4?

11 MS. KING: That should be Exhibit -- I believe that's
12 3.

13 THE COURT: 3 is the photographs -- but these -- have
14 they been marked?

15 MS. KING: Those are all photographs, Your Honor.

16 THE COURT: But have they been marked collectively or
17 individually or --

18 MS. KING: Collectively as Exhibit 3.

19 MS. CHOI: They should be marked.

20 THE COURT: But that applies to --

21 THE CLERK: All of them, yes.

22 THE COURT: So Exhibit 3 actually consists of a
23 number of photographs. All right, so all these items have been
24 admitted into evidence by stipulation. And what that means is
25 you don't have to have someone testifying from the witness

1 stand what these items represent.

2 All right, ladies and gentlemen, I'm going to excuse
3 you for the day. Tomorrow we will begin with testimony. We'll
4 begin with the State's case. We're going to start at 9:30. I
5 would ask that you be here perhaps by quarter after, and we'll
6 try to get started promptly. Yes?

7 PROSPECTIVE JUROR: Do we come directly up here?

8 THE COURT: I assume they report to a room on the --
9 where you were this morning. Okay?

10 PROSPECTIVE JUROR: Okay, thank you.

11 THE COURT: I'm not real familiar with it.

12 PROSPECTIVE JUROR: And you said by 9:15?

13 THE COURT: Yes, 9:15. We'll try to start at 9:30.

14 PROSPECTIVE JUROR: Do we leave the books or do we
15 take them with us?

16 THE CLERK: You can leave them on your chair.

17 THE COURT: I guess you should put that with --

18 THE CLERK: The stipulations?

19 THE COURT: Here's the second page. All right, we
20 are adjourned.

21 MS. KING: Thank you, Your Honor.

22 MS. CHOI: Thank you, Your Honor.

23 (The proceedings were concluded.)

24

25

√ Digitally signed by Patricia H. Musso

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Frederick County in the matter of:

Criminal No. 10-K-16-059271

STATE OF MARYLAND

v.

ABE ARJUN MALLIK

By:



Patricia H. Musso
Transcriber

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

-----X
:
STATE OF MARYLAND :
:
 v. :
:
ABE ARJUN MALLIK, :
:
 Defendant. :
:
-----X

Criminal No. 10-K-16-059271

JURY TRIAL

Frederick, Maryland

June 2, 2017

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

-----X
:
STATE OF MARYLAND :
:
v. : Criminal No. 10-K-16-059271
:
ABE ARJUN MALLIK, :
:
Defendant. :
:
-----X

Frederick, Maryland

June 2, 2017

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE SCOTT L. ROLLE, JUDGE

APPEARANCES:

FOR THE STATE:

JOYCE KING, Esq.
Assistant State's Attorney
100 West Patrick Street
Frederick, Maryland 21701

FOR THE DEFENDANT:

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I N D E X

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Verdict

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THE BAILIFF: All rise. The Circuit Court for Frederick County is now in session. The Honorable Scott Lawrence Rolle presiding.

THE COURT: Good morning, everyone. Please be seated.

MS. KING: Good morning, Your Honor, Joyce King on behalf of the State.

THE COURT: Ms. King, good morning.

MS. KING: If I may call State of Maryland v. Abe Mallik?

MS. CHOI: Good morning, Your Honor, for the record, Sun Choi on behalf of Mr. Abe Mallik, who is standing to my left.

THE COURT: Ms. Choi, good morning, and good morning, sir. Tell me your name please.

MR. MALLIK: Abe Arjun Mallik.

THE COURT: All right, sir.

MS. KING: And, Your Honor, I believe --

THE COURT: I'm just going to bring the jury in --

MS. KING: -- do you just want to bring --

THE COURT: -- call the roll and then send them back out.

MS. KING: Yes, Your Honor.

THE COURT: Okay. That will work.

1 MS. KING: Yes.

2 THE COURT: Just wanted to explain why I'm sitting
3 here instead of the other guy.

4 MS. KING: Thank you, Your Honor.

5 MS. CHOI: Thank you.

6 (The jury entered the courtroom.)

7 THE COURT: Okay, Madam Clerk, would you please call
8 the roll?

9 THE CLERK: Juror No. 1.

10 JUROR NO. 1: (No audible response.)

11 THE CLERK: Juror No 2.

12 JUROR NO. 2: (No audible response.)

13 THE CLERK: Juror No. 3.

14 JUROR NO. 3: (No audible response.)

15 THE CLERK: Juror No. 4.

16 JUROR NO. 4: (No audible response.)

17 THE CLERK: Juror No. 5.

18 JUROR NO. 5: (No audible response.)

19 THE CLERK: Juror No. 6.

20 JUROR NO. 6: (No audible response.)

21 THE CLERK: Juror No. 7.

22 JUROR NO. 7: (No audible response.)

23 THE CLERK: Juror No. 8.

24 JUROR NO. 8: (No audible response.)

25 THE CLERK: Juror No. 9.

1 JUROR NO. 9: (No audible response.)

2 THE CLERK: Juror No. 10.

3 JUROR NO. 10: (No audible response.)

4 THE CLERK: Juror No. 11.

5 JUROR NO. 11: (No audible response.)

6 THE CLERK: Juror No. 12.

7 JUROR NO. 12: (No audible response.)

8 THE COURT: Okay, thanks. Good morning, ladies and
9 gentlemen. My name is Judge Scott Rolle. You're probably
10 wondering why Judge Galloway is not here this morning. He's a
11 retired senior judge and so he was only here for the two days.
12 So I'll be taking the verdict from you in this case. Nothing
13 else has changed at all, but I did want to reconvene you to let
14 you know why you'll be seeing me when you come back in the
15 courtroom with any questions or when you reach your verdict.

16 Now that we've called the roll, you can reconvene to
17 the jury deliberation room to resume your deliberations. If
18 you have a question, write it down, knock on the door, hand it
19 to the deputy and once you reach a verdict, knock on the door
20 and let the deputy know and we'll reconvene everybody. Thank
21 you very much. Hope you had a good weekend and we'll see you
22 shortly. Actually it's Friday. It feels like Monday to me.

23 (The jury retired to deliberate.)

24 THE COURT: All right, counsel, thank you very much
25 and we'll see you --

1 MS. KING: Thank you, Your Honor.

2 THE COURT: -- when the time comes.

3 MS. KING: Thank you, Your Honor.

4 THE COURT: Thank you, Ms. King.

5 MS. KING: If I may defer to Mr. Weddle?.

6 THE COURT: You may. Thank you, Mr. Weddle, good
7 morning, sir.

8 MR. WETTLE: Good morning, Your Honor.

9 MS. KING: And if we could just have one moment? We
10 need to switch out?

11 THE COURT: Sure.

12 (Recess)

13 THE BAILIFF: All rise.

14 THE COURT: Good afternoon, everyone. Please be
15 seated. Ms. King.

16 MS. KING: Good afternoon, Your Honor, Joyce King on
17 behalf of State, the State of Maryland v. Abe Mallik.

18 MS. CHOI: Good afternoon, Your Honor. For the
19 record, Sun Choi on behalf of Mr. Abe Mallik, standing to my
20 left.

21 THE COURT: Sir, tell me your name please.

22 MR. MALLIK: Abe Arjun Mallik, Your Honor.

23 THE COURT: Do you have the note?

24 UNIDENTIFIED SPEAKER: The note?

25 THE COURT: Yeah, so they're on my, they're on my

1 desk.

2 Okay. We have two notes from the jury. You've
3 gotten a copy, Ms. King?

4 MS. KING: Yes, Honor.

5 THE COURT: Ms. Choi, you've gotten a copy?

6 MS. CHOI: I do.

7 THE COURT: Okay.

8 MS. KING: As to count, as to the first question, is
9 this correct, all our, all counts are possession, I think, a
10 simple yes, this is -- all counts are possession of child
11 pornography.

12 MS. CHOI: I agree, Your Honor.

13 THE COURT: Okay. So count, on the first question,
14 you just want me to answer yes? Is the State satisfied with
15 that --

16 MS. KING: Yes.

17 THE COURT: -- defense satisfied?

18 MS. KING: All counts are child pornography.

19 THE COURT: A simple yes?

20 MS. CHOI: Yes.

21 THE COURT: Okay. Yes, all counts --

22 MS. KING: Are child pornography, possession of --

23 THE COURT: Okay.

24 MS. KING: -- child pornography.

25 THE COURT: Okay. Now with regard to the second

1 question, they wanted a definition of possession.

2 MS. KING: Yeah, I don't think it's appropriate to
3 give them a legal definition at this point. I think that if
4 they need to hear the re-reading of what child pornography is,
5 and the definitions that are contained within that instruction,
6 that might be appropriate, but I --

7 THE COURT: Let me, let me ask you this. Did Judge
8 Galloway give them a copy of the instructions when they went
9 back?

10 MS. KING: No, and we can give them a -- I don't, I
11 have no problem with them getting a copy.

12 MS. CHOI: That's fine, Your Honor.

13 THE COURT: Okay. I usually do that. That's why I
14 was curious whether --

15 MS. KING: Yeah, I think it's appropriate.

16 THE COURT: -- he did.

17 MS. CHOI: I think that would be helpful, yes.

18 THE COURT: In fact, it keeps a lot of questions
19 down --

20 MS. KING: Yes.

21 THE COURT: -- frankly. So with, if there's no
22 objection, I will allow the jury to take a copy of the --

23 MS. CHOI: Yes.

24 THE COURT: Here's what I would say on question two.
25 You have to refer to the jury instructions that Judge Galloway

1 gave you.

2 MS. CHOI: Uh-huh.

3 THE COURT: And I'm going to give you a copy of them
4 so you can refer back to them.

5 MS. CHOI: Yes.

6 MS. KING: That's fine.

7 THE COURT: Work?

8 MS. CHOI: Perfect.

9 MS. KING: Yeah.

10 THE COURT: Works for State, works for defense.

11 MS. CHOI: Yes.

12 THE COURT: All right. If, counsel, if you don't
13 mind coming forward and both signing these with your date and
14 the time please?

15 (Discussion off the record.)

16 THE COURT: Oh, they have copies of the jury
17 instructions?

18 UNIDENTIFIED SPEAKER: Yeah, they --

19 THE COURT: I thought you meant these?

20 UNIDENTIFIED SPEAKER: No, the jury --

21 THE COURT: Judge Galloway gave it to them? Then
22 I'll just tell them to refer to the ones --

23 UNIDENTIFIED SPEAKER: Yeah.

24 THE COURT: -- that the Judge gave them.

25 UNIDENTIFIED SPEAKER: Yeah, I gave them the copies.

1 THE COURT: Excellent.

2 MS. KING: Oh, okay.

3 THE COURT: I thought that most judges did that now,
4 so I was surprised. Okay. All right. Counsel, you can step
5 back. I want to make sure the record is clear just to make
6 sure.

7 We've received two notes from the jury. The first
8 one, I'll just read it into the record even though it will be,
9 become a copy of the Court's, part of the Court's file. Can
10 the Court clarify the charges associated with each count? Our
11 current understanding based on the evidence is that Counts 1
12 through 8, the e-mail change, is distribution and that Counts 9
13 through 11 are for possession. Is this correct or are all, all
14 capitalized, counts possession?

15 Both counsel are present with the defendant in this
16 case and they have indicated to me they simply wish me to
17 answer that question by saying, yes, all counts are for
18 possession.

19 MS. CHOI: Your Honor, I would like to add something
20 to that.

21 THE COURT: Okay.

22 MS. CHOI: All counts should be knowingly possess --

23 MS. KING: I would --

24 MS. CHOI: -- because that is the actual charge of
25 each and every single count. So just for the record, to

1 preserve the record, the defense would request that the jury be
2 provided with the answer that all counts, 1 through 11, is
3 knowingly possessed child pornography.

4 MS. KING: And the State would object. The charge is
5 possession of child pornography and they have the instruction
6 that defines knowingly.

7 THE COURT: Okay. Your objection is noted for the
8 record. So we'll proceed as we discussed before.

9 Now the second question says, "Can the Court define
10 possession as it pertains to e-mail exchange? In Counts 1
11 through 8, we know these photos were sent from one e-mail
12 account to another, but none were found on any of his devices.
13 What does the law define as possession?"

14 Both counsel have asked the Court to simply tell them
15 that they need to refer back to the instructions given to them
16 by Judge Galloway and they were given copies of those and they
17 should refer back to those and that's the end of the answer.
18 Is that correct --

19 MS. KING: Yes.

20 THE COURT: -- State? Is that correct, defense?

21 MS. CHOI: Yes.

22 THE COURT: Okay. You can bring the jury in.

23 (The jury entered the courtroom.)

24 THE COURT: Okay. The Court will note for the record
25 that all 12 jurors are present. Ladies and gentlemen, thank

1 you. You've given two notes to the Court which I have
2 discussed with counsel and we're going to answer them in the
3 following way.

4 The first note you gave asked can the Court clarify
5 the charges associated with each count. Our current
6 understanding, based on the evidence, is that Counts 1 through
7 8, the e-mail exchange, is distribution, and that Counts 9
8 through 11 are for possession. Is this correct or are all
9 counts possession?" All counts are possession.

10 On the second question you asked, "Can the Court
11 define possession as it pertains to e-mail exchanges? In
12 Counts 1 through 8 we know those photos were sent from one e-
13 mail account to another, but none were found on any of his
14 devices. What does the law define as possession?"

15 The answer to that question is I, I assume that you
16 were allowed to take back a copy of Judge Galloway's
17 instructions with you, is that correct? You have those?

18 THE JURY: It is.

19 THE COURT: The answer that I have to give you is you
20 have to refer to the Judge's instructions. Look there for your
21 answer, okay?

22 All right. Thank you very much. If you have any
23 other questions, please knock on the door, or notes, and let my
24 bailiff know and when you've reached a verdict, please knock on
25 the door and let my bailiff know.

1 MS. CHOI: Thank you. Thank you, Your Honor.

2 THE COURT: Ladies and gentlemen, thank you. Did you
3 guys, you got lunch and everything, correct?

4 THE JURY: Yes. Thank you.

5 JUROR: That was very good.

6 THE COURT: All right, excellent. You're welcome.
7 This will become part of the record.)

8 (The jury retired to deliberate.)

9 THE COURT: Anything else, State?

10 MS. KING: Nothing further, Your Honor.

11 THE COURT: Anything else, defense?

12 MS. CHOI: No.

13 THE COURT: All right, counsel, thank you very much.

14 MS. CHOI: Thank you.

15 THE BAILIFF: All rise.

16 THE COURT: We're in recess.

17 (Recess)

18 THE COURT: Shortly. Ms. King, you can come on up.

19 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

20 THE COURT: Ms. Choi, you can come on up.

21 MS. KING: Good afternoon, Your Honor, Joyce King on
22 behalf of the State.

23 THE COURT: If you don't mind calling the case?

24 MS. KING: State of Maryland v. --

25 THE COURT: Yeah, thanks.

1 MS. KING: State of Maryland v. Abe Mallik.

2 THE COURT: Okay.

3 MS. CHOI: May it please the Court, Your Honor, Sun
4 Choi on behalf of Mr. Abe Mallik.

5 THE COURT: Sir, tell me your name please.

6 MR. MALLIK: Abe Arjun Mallik, Your Honor.

7 THE COURT: Okay. The jury has indicated they have
8 reached a verdict. Are you ready to receive that, Madam State?

9 MS. KING: Yes, Your Honor.

10 THE COURT: Defense?

11 MS. CHOI: Yes, Your Honor.

12 THE COURT: I assume that they received a verdict
13 sheet?

14 MS. KING: Yes --

15 MS. CHOI: Yes, Your Honor.

16 MS. KING: -- Your Honor.

17 THE COURT: Do you know? Okay. Good. You can bring
18 the jury in.

19 (The jury entered the courtroom.)

20 THE COURT: Okay. The Court will note for the record
21 all -- you may be seated, ladies and gentlemen -- that the, all
22 the 12 jurors are present. Judge Galloway probably told you
23 this, ladies and gentlemen, but let me just explain to you how
24 this works. In a minute, you're going to be asked by the clerk
25 a couple questions. The first one is, ladies and gentlemen of

1 the jury, have you reached a verdict? If you have, as you've
2 indicated, you will all say in unison, we have. The next
3 question she'll say is, who shall say for you? You will say in
4 unison, our foreperson, forewoman, foreman, what -- are you the
5 foreman, sir?

6 (No audible response.)

7 THE COURT: Okay. Who, you'll say our foreman
8 together in unison. Sir, then you will then stand up and she
9 will ask you the questions on the verdict sheet and you will
10 give the answers to them. Then there will be a harkening and
11 perhaps some polling, things of that nature, okay? So that's
12 how that's going to work. Madam Clerk. Oh, go ahead.

13 VERDICT

14 THE CLERK: Ladies and gentlemen of the jury, have
15 you agreed upon your verdict?

16 THE JURY: We have.

17 THE CLERK: Who shall speak for you?

18 THE CLERK: Our foreman.

19 THE COURT: Okay, Mr. Foreman, please stand.

20 THE CLERK: How do you found the defendant, Abe
21 Mallik, guilty or not guilty, as to the charges of Count 1,
22 possession of child pornography?

23 THE FOREPERSON: Guilty.

24 THE CLERK: As to Count 2, how do you find the
25 defendant as to the charge of possession of child pornography?

1 THE FOREPERSON: Guilty.

2 THE CLERK: As to Count 3, how do you find the
3 defendant as to the charge of possession of child pornography?

4 THE FOREPERSON: Guilty.

5 THE CLERK: As to Count 4, how do you find the
6 defendant as to the charge of possession of child pornography?

7 THE FOREPERSON: Guilty.

8 THE CLERK: As to Count 5, how do you find the
9 defendant as to the charge of possession of child pornography?

10 THE FOREPERSON: Guilty.

11 THE CLERK: As to Count 6, how do you find the
12 defendant as to the charge of possession of child pornography?

13 THE FOREPERSON: Guilty.

14 THE CLERK: As to Count 7, how do you find the
15 defendant as to the charge of possession of child pornography?

16 THE FOREPERSON: Guilty.

17 THE CLERK: As to Count 8, how do you find the
18 defendant as to the charge of possession of child pornography?

19 THE FOREPERSON: Guilty.

20 THE CLERK: As to Count 9, how do you find the
21 defendant as to the charge of possession of child pornography?

22 THE FOREPERSON: Guilty.

23 THE CLERK: As to Count 10, how do you find the
24 defendant as to the charge of possession of child pornography?

25 THE FOREPERSON: Guilty.

1 THE CLERK: As to Count 11, how do you find the
2 defendant as to the charge of possession of child pornography?

3 THE FOREPERSON: Guilty.

4 THE CLERK: Ladies and gentlemen of the jury, harken
5 to your verdict for the Court as recorded it. Your foreperson
6 states that the defendant, Abe Mallik, is guilty and so you
7 all, if so, please respond, I do.

8 THE JURY: I do.

9 THE COURT: Would anybody like the jury polled?

10 MS. CHOI: No, Your Honor.

11 THE COURT: No? Okay.

12 MS. CHOI: Oh, actually, yes.

13 THE COURT: Yes? All right. If you don't mind,
14 Madam Clerk?

15 THE CLERK: No. 12, do you find, is the verdict
16 guilty?

17 JUROR NO. 12: Yes.

18 THE CLERK: Juror 11, do you find the verdict as
19 guilty?

20 JUROR NO. 11: Yes.

21 THE CLERK: Juror 10, do you find the verdict as
22 guilty?

23 JUROR NO. 10: Yes.

24 THE CLERK: Juror No. 9, do you find the verdict as
25 guilty?

1 JUROR NO. 9: Yes.

2 THE CLERK: Juror No. 8, do you find the verdict as
3 guilty?

4 JUROR NO. 8: Yes.

5 THE CLERK: Juror No. 7, do you find the verdict as
6 guilty?

7 JUROR NO. 7: Yes.

8 THE CLERK: Juror No. 6, do you find the verdict as
9 guilty?

10 JUROR NO. 6: Yes.

11 THE CLERK: Juror No. 5, do you find the verdict as
12 guilty?

13

14 JUROR NO. 5: Yes.

15 THE CLERK: Juror No. 4, do you find the verdict as
16 guilty?

17 JUROR NO. 4: Yes.

18 THE CLERK: Juror No. 3, do you find the verdict as
19 guilty?

20 JUROR NO. 3: Yes.

21 THE CLERK: Juror No. 2, do you find the verdict as
22 guilty?

23 JUROR NO. 2: Yes.

24 THE CLERK: Juror No. 1, do you find the verdict as
25 guilty?

1 JUROR NO. 1: Yes.

2 THE COURT: Okay. Ladies and gentlemen, on behalf of
3 the citizens of Frederick County and all of the parties and the
4 court system here, we appreciate your service. We understand
5 we've taken you out of your lives for, I think, three days,
6 four days, something of that nature, and we do very much
7 appreciate it. This is a civic duty that you've done and we do
8 appreciate the time that you've given us.

9 You are now free to discuss the case with anybody you
10 wish. If the lawyers want to talk to you and you're willing to
11 do that, you can. You do not have to. If you want to just
12 leave and not speak of it again, you're welcome to do that, but
13 you are free to, to speak about it if you wish.

14 Again, thank you, you're free to go. If there's any
15 belongings you have back in the jury room, you can go pick them
16 up and that's where you'll leave from. And you'll get your
17 cell phones back as well. And, again, thank you very much.
18 Please have a great weekend and we appreciate your service.

19 (The jury was discharged.)

20 THE COURT: State as to sentencing.

21 MS. KING: Your Honor, I believe that Judge Galloway
22 indicated to us that he would want a presentence investigation
23 as well as a full psychosexual evaluation prior to sentencing.

24 THE COURT: Okay.

25 MS. KING: If the Court could order that? The State

1 would also make a motion. There are images of child
2 pornography that were entered into evidence. If we could have
3 that placed under seal?

4 THE COURT: Okay.

5 MS. CHOI: That is correct, Your Honor. The Judge
6 was going to order the presentencing.

7 THE COURT: All right. This Court will order a PSI,
8 presentence investigation, and a psychosexual evaluation to be
9 included. The child pornography images that were introduced in
10 evidence are hereby sealed. How long do you want for
11 sentencing?

12 MS. KING: I'll defer to counsel.

13 THE COURT: Ms. Choi?

14 MS. CHOI: I would say at least an hour.

15 THE COURT: Okay, an hour? And how much time do you
16 want between now and sentencing?

17 MS. CHOI: Your Honor, for the PSI, I would ask for
18 approximately 30 days.

19 THE COURT: Okay. I'm going to go eight weeks out.

20 MS. CHOI: Okay.

21 THE COURT: Will that work? Okay.

22 MS. CHOI: That's --

23 THE COURT: All right. This sentencing will be set
24 in for Thursday, August 3, 2017, at 9:00 a.m. State as to
25 bond?

1 MS. KING: The State would make a motion to revoke
2 bond at this time.

3 THE COURT: Defendant's bond is revoked.

4 MS. CHOI: Your Honor, what was the date of that?

5 THE COURT: August --

6 MS. KING: 3rd.

7 UNIDENTIFIED SPEAKER: Third.

8 THE COURT: -- 3rd, correct. That's a Thursday at 9
9 o'clock.

10 MS. CHOI: Your Honor, at this point could I request
11 for -- can we approach?

12 THE COURT: Sure can.

13 (Bench conference follows:)

14 THE COURT: Yes?

15 MS. CHOI: I'm just asking the State, is there a
16 reason --

17 MS. KING: The State would move to revoke the bond
18 based on the evidence of him communicating with minor children
19 and the nature of the charges, I think it's appropriate to
20 revoke his bond.

21 MS. CHOI: Could we, well, I don't think --

22 MS. KING: You could, you could request a bond --

23 MS. CHOI: -- Your Honor --

24 MS. KING: -- review.

25 MS. CHOI: Yeah. I mean as soon as possible because

1 he has not done anything for the last year in terms of any kind
2 of safety communication or any of that. So at this point I
3 don't think that's appropriate, Your Honor --

4 THE COURT: Okay.

5 MS. CHOI: -- and it's a first-time offender and the
6 guidelines were literally probation to six months.

7 THE COURT: Okay.

8 MS. CHOI: I would ask that Your Honor consider the
9 bond.

10 THE COURT: Okay. I'm, I'm going to revoke it now,
11 but I will consider a bond hearing if you'd like.

12 MS. CHOI: Okay.

13 THE COURT: Just file the motion and I'll set it in.

14 MS. CHOI: Okay.

15 THE COURT: Okay? Because I, I want more information
16 because right now the sentence that he's facing is substantial.

17 MS. CHOI: Okay.

18 THE COURT: Okay?

19 MS. CHOI: I'll file it right away.

20 MS. KING: Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 MS. KING: Thank you.

23 (Bench conference concluded.)

24 THE COURT: Thank you.

25 MS. CHOI: Thank you, Your Honor.

1 THE COURT: Yes.

2 MS. CHOI: For the record, I will go ahead and file
3 for the defendant the motion for --

4 THE COURT: Okay.

5 MS. CHOI: -- a bond review.

6 THE COURT: And I'll, I'll hear that, okay?

7 MS. KING: Thank you, Your Honor. If I may be
8 excused?

9 THE COURT: You may. Thank you. Ms. Choi, you're
10 excused as well.

11 MS. CHOI: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (The proceedings were concluded.)

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√ Digitally signed by Tracy Hahn

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Frederick County in the matter of:

Criminal No. 10-K-16-059271

STATE OF MARYLAND

v.

ABE MALLIK

By:


TRACY HAHN
Transcriber

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

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STATE OF MARYLAND :
:
v. : Criminal No. 10-K-16-059271
:
ABE ARJUN MALLIK, :
:
Defendant. :
:
-----X

JURY TRIAL

Frederick, Maryland

June 2, 2017

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:
STATE OF MARYLAND :
:
 v. :
Criminal No. 10-K-16-059271
:
ABE ARJUN MALLIK, :
:
Defendant. :
:
-----X

June 2, 2017

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I N D E X

Page

Verdict

16

P R O C E E D I N G S

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THE BAILIFF: All rise. The Circuit Court for Frederick County is now in session. The Honorable Scott Lawrence Rolle presiding.

THE COURT: Good morning, everyone. Please be seated.

MS. KING: Good morning, Your Honor, Joyce King on behalf of the State.

THE COURT: Ms. King, good morning.

MS. KING: If I may call State of Maryland v. Abe Mallik?

MS. CHOI: Good morning, Your Honor, for the record, Sun Choi on behalf of Mr. Abe Mallik, who is standing to my left.

THE COURT: Ms. Choi, good morning, and good morning, sir. Tell me your name please.

MR. MALLIK: Abe Arjun Mallik.

THE COURT: All right, sir.

MS. KING: And, Your Honor, I believe --

THE COURT: I'm just going to bring the jury in --

MS. KING: -- do you just want to bring --

THE COURT: -- call the roll and then send them back out.

MS. KING: Yes, Your Honor.

THE COURT: Okay. That will work.

1 MS. KING: Yes.

2 THE COURT: Just wanted to explain why I'm sitting
3 here instead of the other guy.

4 MS. KING: Thank you, Your Honor.

5 MS. CHOI: Thank you.

6 (The jury entered the courtroom.)

7 THE COURT: Okay, Madam Clerk, would you please call
8 the roll?

9 THE CLERK: Juror No. 1.

10 JUROR NO. 1: (No audible response.)

11 THE CLERK: Juror No 2.

12 JUROR NO. 2: (No audible response.)

13 THE CLERK: Juror No. 3.

14 JUROR NO. 3: (No audible response.)

15 THE CLERK: Juror No. 4.

16 JUROR NO. 4: (No audible response.)

17 THE CLERK: Juror No. 5.

18 JUROR NO. 5: (No audible response.)

19 THE CLERK: Juror No. 6.

20 JUROR NO. 6: (No audible response.)

21 THE CLERK: Juror No. 7.

22 JUROR NO. 7: (No audible response.)

23 THE CLERK: Juror No. 8.

24 JUROR NO. 8: (No audible response.)

25 THE CLERK: Juror No. 9.

1 JUROR NO. 9: (No audible response.)

2 THE CLERK: Juror No. 10.

3 JUROR NO. 10: (No audible response.)

4 THE CLERK: Juror No. 11.

5 JUROR NO. 11: (No audible response.)

6 THE CLERK: Juror No. 12.

7 JUROR NO. 12: (No audible response.)

8 THE COURT: Okay, thanks. Good morning, ladies and
9 gentlemen. My name is Judge Scott Rolle. You're probably
10 wondering why Judge Galloway is not here this morning. He's a
11 retired senior judge and so he was only here for the two days.
12 So I'll be taking the verdict from you in this case. Nothing
13 else has changed at all, but I did want to reconvene you to let
14 you know why you'll be seeing me when you come back in the
15 courtroom with any questions or when you reach your verdict.

16 Now that we've called the roll, you can reconvene to
17 the jury deliberation room to resume your deliberations. If
18 you have a question, write it down, knock on the door, hand it
19 to the deputy and once you reach a verdict, knock on the door
20 and let the deputy know and we'll reconvene everybody. Thank
21 you very much. Hope you had a good weekend and we'll see you
22 shortly. Actually it's Friday. It feels like Monday to me.

23 (The jury retired to deliberate.)

24 THE COURT: All right, counsel, thank you very much
25 and we'll see you --

1 MS. KING: Thank you, Your Honor.

2 THE COURT: -- when the time comes.

3 MS. KING: Thank you, Your Honor.

4 THE COURT: Thank you, Ms. King.

5 MS. KING: If I may defer to Mr. Weddle?.

6 THE COURT: You may. Thank you, Mr. Weddle, good
7 morning, sir.

8 MR. WETTLE: Good morning, Your Honor.

9 MS. KING: And if we could just have one moment? We
10 need to switch out?

11 THE COURT: Sure.

12 (Recess)

13 THE BAILIFF: All rise.

14 THE COURT: Good afternoon, everyone. Please be
15 seated. Ms. King.

16 MS. KING: Good afternoon, Your Honor, Joyce King on
17 behalf of State, the State of Maryland v. Abe Mallik.

18 MS. CHOI: Good afternoon, Your Honor. For the
19 record, Sun Choi on behalf of Mr. Abe Mallik, standing to my
20 left.

21 THE COURT: Sir, tell me your name please.

22 MR. MALLIK: Abe Arjun Mallik, Your Honor.

23 THE COURT: Do you have the note?

24 UNIDENTIFIED SPEAKER: The note?

25 THE COURT: Yeah, so they're on my, they're on my

1 desk.

2 Okay. We have two notes from the jury. You've
3 gotten a copy, Ms. King?

4 MS. KING: Yes, Honor.

5 THE COURT: Ms. Choi, you've gotten a copy?

6 MS. CHOI: I do.

7 THE COURT: Okay.

8 MS. KING: As to count, as to the first question, is
9 this correct, all our, all counts are possession, I think, a
10 simple yes, this is -- all counts are possession of child
11 pornography.

12 MS. CHOI: I agree, Your Honor.

13 THE COURT: Okay. So count, on the first question,
14 you just want me to answer yes? Is the State satisfied with
15 that --

16 MS. KING: Yes.

17 THE COURT: -- defense satisfied?

18 MS. KING: All counts are child pornography.

19 THE COURT: A simple yes?

20 MS. CHOI: Yes.

21 THE COURT: Okay. Yes, all counts --

22 MS. KING: Are child pornography, possession of --

23 THE COURT: Okay.

24 MS. KING: -- child pornography.

25 THE COURT: Okay. Now with regard to the second

1 question, they wanted a definition of possession.

2 MS. KING: Yeah, I don't think it's appropriate to
3 give them a legal definition at this point. I think that if
4 they need to hear the re-reading of what child pornography is,
5 and the definitions that are contained within that instruction,
6 that might be appropriate, but I --

7 THE COURT: Let me, let me ask you this. Did Judge
8 Galloway give them a copy of the instructions when they went
9 back?

10 MS. KING: No, and we can give them a -- I don't, I
11 have no problem with them getting a copy.

12 MS. CHOI: That's fine, Your Honor.

13 THE COURT: Okay. I usually do that. That's why I
14 was curious whether --

15 MS. KING: Yeah, I think it's appropriate.

16 THE COURT: -- he did.

17 MS. CHOI: I think that would be helpful, yes.

18 THE COURT: In fact, it keeps a lot of questions
19 down --

20 MS. KING: Yes.

21 THE COURT: -- frankly. So with, if there's no
22 objection, I will allow the jury to take a copy of the --

23 MS. CHOI: Yes.

24 THE COURT: Here's what I would say on question two.
25 You have to refer to the jury instructions that Judge Galloway

1 gave you.

2 MS. CHOI: Uh-huh.

3 THE COURT: And I'm going to give you a copy of them
4 so you can refer back to them.

5 MS. CHOI: Yes.

6 MS. KING: That's fine.

7 THE COURT: Work?

8 MS. CHOI: Perfect.

9 MS. KING: Yeah.

10 THE COURT: Works for State, works for defense.

11 MS. CHOI: Yes.

12 THE COURT: All right. If, counsel, if you don't
13 mind coming forward and both signing these with your date and
14 the time please?

15 (Discussion off the record.)

16 THE COURT: Oh, they have copies of the jury
17 instructions?

18 UNIDENTIFIED SPEAKER: Yeah, they --

19 THE COURT: I thought you meant these?

20 UNIDENTIFIED SPEAKER: No, the jury --

21 THE COURT: Judge Galloway gave it to them? Then
22 I'll just tell them to refer to the ones --

23 UNIDENTIFIED SPEAKER: Yeah.

24 THE COURT: -- that the Judge gave them.

25 UNIDENTIFIED SPEAKER: Yeah, I gave them the copies.

1 THE COURT: Excellent.

2 MS. KING: Oh, okay.

3 THE COURT: I thought that most judges did that now,
4 so I was surprised. Okay. All right. Counsel, you can step
5 back. I want to make sure the record is clear just to make
6 sure.

7 We've received two notes from the jury. The first
8 one, I'll just read it into the record even though it will be,
9 become a copy of the Court's, part of the Court's file. Can
10 the Court clarify the charges associated with each count? Our
11 current understanding based on the evidence is that Counts 1
12 through 8, the e-mail change, is distribution and that Counts 9
13 through 11 are for possession. Is this correct or are all, all
14 capitalized, counts possession?

15 Both counsel are present with the defendant in this
16 case and they have indicated to me they simply wish me to
17 answer that question by saying, yes, all counts are for
18 possession.

19 MS. CHOI: Your Honor, I would like to add something
20 to that.

21 THE COURT: Okay.

22 MS. CHOI: All counts should be knowingly possess --

23 MS. KING: I would --

24 MS. CHOI: -- because that is the actual charge of
25 each and every single count. So just for the record, to

1 preserve the record, the defense would request that the jury be
2 provided with the answer that all counts, 1 through 11, is
3 knowingly possessed child pornography.

4 MS. KING: And the State would object. The charge is
5 possession of child pornography and they have the instruction
6 that defines knowingly.

7 THE COURT: Okay. Your objection is noted for the
8 record. So we'll proceed as we discussed before.

9 Now the second question says, "Can the Court define
10 possession as it pertains to e-mail exchange? In Counts 1
11 through 8, we know these photos were sent from one e-mail
12 account to another, but none were found on any of his devices.
13 What does the law define as possession?"

14 Both counsel have asked the Court to simply tell them
15 that they need to refer back to the instructions given to them
16 by Judge Galloway and they were given copies of those and they
17 should refer back to those and that's the end of the answer.
18 Is that correct --

19 MS. KING: Yes.

20 THE COURT: -- State? Is that correct, defense?

21 MS. CHOI: Yes.

22 THE COURT: Okay. You can bring the jury in.

23 (The jury entered the courtroom.)

24 THE COURT: Okay. The Court will note for the record
25 that all 12 jurors are present. Ladies and gentlemen, thank

1 you. You've given two notes to the Court which I have
2 discussed with counsel and we're going to answer them in the
3 following way.

4 The first note you gave asked can the Court clarify
5 the charges associated with each count. Our current
6 understanding, based on the evidence, is that Counts 1 through
7 8, the e-mail exchange, is distribution, and that Counts 9
8 through 11 are for possession. Is this correct or are all
9 counts possession?" All counts are possession.

10 On the second question you asked, "Can the Court
11 define possession as it pertains to e-mail exchanges? In
12 Counts 1 through 8 we know those photos were sent from one e-
13 mail account to another, but none were found on any of his
14 devices. What does the law define as possession?"

15 The answer to that question is I, I assume that you
16 were allowed to take back a copy of Judge Galloway's
17 instructions with you, is that correct? You have those?

18 THE JURY: It is.

19 THE COURT: The answer that I have to give you is you
20 have to refer to the Judge's instructions. Look there for your
21 answer, okay?

22 All right. Thank you very much. If you have any
23 other questions, please knock on the door, or notes, and let my
24 bailiff know and when you've reached a verdict, please knock on
25 the door and let my bailiff know.

1 MS. CHOI: Thank you. Thank you, Your Honor.

2 THE COURT: Ladies and gentlemen, thank you. Did you
3 guys, you got lunch and everything, correct?

4 THE JURY: Yes. Thank you.

5 JUROR: That was very good.

6 THE COURT: All right, excellent. You're welcome.
7 This will become part of the record.)

8 (The jury retired to deliberate.)

9 THE COURT: Anything else, State?

10 MS. KING: Nothing further, Your Honor.

11 THE COURT: Anything else, defense?

12 MS. CHOI: No.

13 THE COURT: All right, counsel, thank you very much.

14 MS. CHOI: Thank you.

15 THE BAILIFF: All rise.

16 THE COURT: We're in recess.

17 (Recess)

18 THE COURT: Shortly. Ms. King, you can come on up.

19 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

20 THE COURT: Ms. Choi, you can come on up.

21 MS. KING: Good afternoon, Your Honor, Joyce King on
22 behalf of the State.

23 THE COURT: If you don't mind calling the case?

24 MS. KING: State of Maryland v. --

25 THE COURT: Yeah, thanks.

1 MS. KING: State of Maryland v. Abe Mallik.

2 THE COURT: Okay.

3 MS. CHOI: May it please the Court, Your Honor, Sun
4 Choi on behalf of Mr. Abe Mallik.

5 THE COURT: Sir, tell me your name please.

6 MR. MALLIK: Abe Arjun Mallik, Your Honor.

7 THE COURT: Okay. The jury has indicated they have
8 reached a verdict. Are you ready to receive that, Madam State?

9 MS. KING: Yes, Your Honor.

10 THE COURT: Defense?

11 MS. CHOI: Yes, Your Honor.

12 THE COURT: I assume that they received a verdict
13 sheet?

14 MS. KING: Yes --

15 MS. CHOI: Yes, Your Honor.

16 MS. KING: -- Your Honor.

17 THE COURT: Do you know? Okay. Good. You can bring
18 the jury in.

19 (The jury entered the courtroom.)

20 THE COURT: Okay. The Court will note for the record
21 all -- you may be seated, ladies and gentlemen -- that the, all
22 the 12 jurors are present. Judge Galloway probably told you
23 this, ladies and gentlemen, but let me just explain to you how
24 this works. In a minute, you're going to be asked by the clerk
25 a couple questions. The first one is, ladies and gentlemen of

1 the jury, have you reached a verdict? If you have, as you've
2 indicated, you will all say in unison, we have. The next
3 question she'll say is, who shall say for you? You will say in
4 unison, our foreperson, forewoman, foreman, what -- are you the
5 foreman, sir?

6 (No audible response.)

7 THE COURT: Okay. Who, you'll say our foreman
8 together in unison. Sir, then you will then stand up and she
9 will ask you the questions on the verdict sheet and you will
10 give the answers to them. Then there will be a harkening and
11 perhaps some polling, things of that nature, okay? So that's
12 how that's going to work. Madam Clerk. Oh, go ahead.

13 VERDICT

14 THE CLERK: Ladies and gentlemen of the jury, have
15 you agreed upon your verdict?

16 THE JURY: We have.

17 THE CLERK: Who shall speak for you?

18 THE CLERK: Our foreman.

19 THE COURT: Okay, Mr. Foreman, please stand.

20 THE CLERK: How do you found the defendant, Abe
21 Mallik, guilty or not guilty, as to the charges of Count 1,
22 possession of child pornography?

23 THE FOREPERSON: Guilty.

24 THE CLERK: As to Count 2, how do you find the
25 defendant as to the charge of possession of child pornography?

1 THE FOREPERSON: Guilty.

2 THE CLERK: As to Count 3, how do you find the
3 defendant as to the charge of possession of child pornography?

4 THE FOREPERSON: Guilty.

5 THE CLERK: As to Count 4, how do you find the
6 defendant as to the charge of possession of child pornography?

7 THE FOREPERSON: Guilty.

8 THE CLERK: As to Count 5, how do you find the
9 defendant as to the charge of possession of child pornography?

10 THE FOREPERSON: Guilty.

11 THE CLERK: As to Count 6, how do you find the
12 defendant as to the charge of possession of child pornography?

13 THE FOREPERSON: Guilty.

14 THE CLERK: As to Count 7, how do you find the
15 defendant as to the charge of possession of child pornography?

16 THE FOREPERSON: Guilty.

17 THE CLERK: As to Count 8, how do you find the
18 defendant as to the charge of possession of child pornography?

19 THE FOREPERSON: Guilty.

20 THE CLERK: As to Count 9, how do you find the
21 defendant as to the charge of possession of child pornography?

22 THE FOREPERSON: Guilty.

23 THE CLERK: As to Count 10, how do you find the
24 defendant as to the charge of possession of child pornography?

25 THE FOREPERSON: Guilty.

1 THE CLERK: As to Count 11, how do you find the
2 defendant as to the charge of possession of child pornography?

3 THE FOREPERSON: Guilty.

4 THE CLERK: Ladies and gentlemen of the jury, harken
5 to your verdict for the Court as recorded it. Your foreperson
6 states that the defendant, Abe Mallik, is guilty and so you
7 all, if so, please respond, I do.

8 THE JURY: I do.

9 THE COURT: Would anybody like the jury polled?

10 MS. CHOI: No, Your Honor.

11 THE COURT: No? Okay.

12 MS. CHOI: Oh, actually, yes.

13 THE COURT: Yes? All right. If you don't mind,
14 Madam Clerk?

15 THE CLERK: No. 12, do you find, is the verdict
16 guilty?

17 JUROR NO. 12: Yes.

18 THE CLERK: Juror 11, do you find the verdict as
19 guilty?

20 JUROR NO. 11: Yes.

21 THE CLERK: Juror 10, do you find the verdict as
22 guilty?

23 JUROR NO. 10: Yes.

24 THE CLERK: Juror No. 9, do you find the verdict as
25 guilty?

1 JUROR NO. 9: Yes.

2 THE CLERK: Juror No. 8, do you find the verdict as
3 guilty?

4 JUROR NO. 8: Yes.

5 THE CLERK: Juror No. 7, do you find the verdict as
6 guilty?

7 JUROR NO. 7: Yes.

8 THE CLERK: Juror No. 6, do you find the verdict as
9 guilty?

10 JUROR NO. 6: Yes.

11 THE CLERK: Juror No. 5, do you find the verdict as
12 guilty?

13

14 JUROR NO. 5: Yes.

15 THE CLERK: Juror No. 4, do you find the verdict as
16 guilty?

17 JUROR NO. 4: Yes.

18 THE CLERK: Juror No. 3, do you find the verdict as
19 guilty?

20 JUROR NO. 3: Yes.

21 THE CLERK: Juror No. 2, do you find the verdict as
22 guilty?

23 JUROR NO. 2: Yes.

24 THE CLERK: Juror No. 1, do you find the verdict as
25 guilty?

1 JUROR NO. 1: Yes.

2 THE COURT: Okay. Ladies and gentlemen, on behalf of
3 the citizens of Frederick County and all of the parties and the
4 court system here, we appreciate your service. We understand
5 we've taken you out of your lives for, I think, three days,
6 four days, something of that nature, and we do very much
7 appreciate it. This is a civic duty that you've done and we do
8 appreciate the time that you've given us.

9 You are now free to discuss the case with anybody you
10 wish. If the lawyers want to talk to you and you're willing to
11 do that, you can. You do not have to. If you want to just
12 leave and not speak of it again, you're welcome to do that, but
13 you are free to, to speak about it if you wish.

14 Again, thank you, you're free to go. If there's any
15 belongings you have back in the jury room, you can go pick them
16 up and that's where you'll leave from. And you'll get your
17 cell phones back as well. And, again, thank you very much.
18 Please have a great weekend and we appreciate your service.

19 (The jury was discharged.)

20 THE COURT: State as to sentencing.

21 MS. KING: Your Honor, I believe that Judge Galloway
22 indicated to us that he would want a presentence investigation
23 as well as a full psychosexual evaluation prior to sentencing.

24 THE COURT: Okay.

25 MS. KING: If the Court could order that? The State

1 would also make a motion. There are images of child
2 pornography that were entered into evidence. If we could have
3 that placed under seal?

4 THE COURT: Okay.

5 MS. CHOI: That is correct, Your Honor. The Judge
6 was going to order the presentencing.

7 THE COURT: All right. This Court will order a PSI,
8 presentence investigation, and a psychosexual evaluation to be
9 included. The child pornography images that were introduced in
10 evidence are hereby sealed. How long do you want for
11 sentencing?

12 MS. KING: I'll defer to counsel.

13 THE COURT: Ms. Choi?

14 MS. CHOI: I would say at least an hour.

15 THE COURT: Okay, an hour? And how much time do you
16 want between now and sentencing?

17 MS. CHOI: Your Honor, for the PSI, I would ask for
18 approximately 30 days.

19 THE COURT: Okay. I'm going to go eight weeks out.

20 MS. CHOI: Okay.

21 THE COURT: Will that work? Okay.

22 MS. CHOI: That's --

23 THE COURT: All right. This sentencing will be set
24 in for Thursday, August 3, 2017, at 9:00 a.m. State as to
25 bond?

1 MS. KING: The State would make a motion to revoke
2 bond at this time.

3 THE COURT: Defendant's bond is revoked.

4 MS. CHOI: Your Honor, what was the date of that?

5 THE COURT: August --

6 MS. KING: 3rd.

7 UNIDENTIFIED SPEAKER: Third.

8 THE COURT: -- 3rd, correct. That's a Thursday at 9
9 o'clock.

10 MS. CHOI: Your Honor, at this point could I request
11 for -- can we approach?

12 THE COURT: Sure can.

13 (Bench conference follows:)

14 THE COURT: Yes?

15 MS. CHOI: I'm just asking the State, is there a
16 reason --

17 MS. KING: The State would move to revoke the bond
18 based on the evidence of him communicating with minor children
19 and the nature of the charges, I think it's appropriate to
20 revoke his bond.

21 MS. CHOI: Could we, well, I don't think --

22 MS. KING: You could, you could request a bond --

23 MS. CHOI: -- Your Honor --

24 MS. KING: -- review.

25 MS. CHOI: Yeah. I mean as soon as possible because

1 he has not done anything for the last year in terms of any kind
2 of safety communication or any of that. So at this point I
3 don't think that's appropriate, Your Honor --

4 THE COURT: Okay.

5 MS. CHOI: -- and it's a first-time offender and the
6 guidelines were literally probation to six months.

7 THE COURT: Okay.

8 MS. CHOI: I would ask that Your Honor consider the
9 bond.

10 THE COURT: Okay. I'm, I'm going to revoke it now,
11 but I will consider a bond hearing if you'd like.

12 MS. CHOI: Okay.

13 THE COURT: Just file the motion and I'll set it in.

14 MS. CHOI: Okay.

15 THE COURT: Okay? Because I, I want more information
16 because right now the sentence that he's facing is substantial.

17 MS. CHOI: Okay.

18 THE COURT: Okay?

19 MS. CHOI: I'll file it right away.

20 MS. KING: Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 MS. KING: Thank you.

23 (Bench conference concluded.)

24 THE COURT: Thank you.

25 MS. CHOI: Thank you, Your Honor.

1 THE COURT: Yes.

2 MS. CHOI: For the record, I will go ahead and file
3 for the defendant the motion for --

4 THE COURT: Okay.

5 MS. CHOI: -- a bond review.

6 THE COURT: And I'll, I'll hear that, okay?

7 MS. KING: Thank you, Your Honor. If I may be
8 excused?

9 THE COURT: You may. Thank you. Ms. Choi, you're
10 excused as well.

11 MS. CHOI: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (The proceedings were concluded.)

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√ Digitally signed by Tracy Hahn

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Frederick County in the matter of:

Criminal No. 10-K-16-059271

STATE OF MARYLAND

v.

ABE MALLIK

By:


TRACY HAHN
Transcriber

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

-----X
:
STATE OF MARYLAND :
:
v. : Criminal No. 10-K-16-059271
:
ABE ARJUN MALLIK, :
:
Defendant. :
:
-----X

JURY TRIAL

Frederick, Maryland

June 2, 2017

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

-----X
:
STATE OF MARYLAND :
:
v. : Criminal No. 10-K-16-059271
:
ABE ARJUN MALLIK, :
:
Defendant. :
:
-----X

Frederick, Maryland

June 2, 2017

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE SCOTT L. ROLLE, JUDGE

APPEARANCES:

FOR THE STATE:

JOYCE KING, Esq.
Assistant State's Attorney
100 West Patrick Street
Frederick, Maryland 21701

FOR THE DEFENDANT:

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DC Metro Law, LLC
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Frederick, Maryland 21701

I N D E X

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THE BAILIFF: All rise. The Circuit Court for Frederick County is now in session. The Honorable Scott Lawrence Rolle presiding.

THE COURT: Good morning, everyone. Please be seated.

MS. KING: Good morning, Your Honor, Joyce King on behalf of the State.

THE COURT: Ms. King, good morning.

MS. KING: If I may call State of Maryland v. Abe Mallik?

MS. CHOI: Good morning, Your Honor, for the record, Sun Choi on behalf of Mr. Abe Mallik, who is standing to my left.

THE COURT: Ms. Choi, good morning, and good morning, sir. Tell me your name please.

MR. MALLIK: Abe Arjun Mallik.

THE COURT: All right, sir.

MS. KING: And, Your Honor, I believe --

THE COURT: I'm just going to bring the jury in --

MS. KING: -- do you just want to bring --

THE COURT: -- call the roll and then send them back out.

MS. KING: Yes, Your Honor.

THE COURT: Okay. That will work.

1 MS. KING: Yes.

2 THE COURT: Just wanted to explain why I'm sitting
3 here instead of the other guy.

4 MS. KING: Thank you, Your Honor.

5 MS. CHOI: Thank you.

6 (The jury entered the courtroom.)

7 THE COURT: Okay, Madam Clerk, would you please call
8 the roll?

9 THE CLERK: Juror No. 1.

10 JUROR NO. 1: (No audible response.)

11 THE CLERK: Juror No 2.

12 JUROR NO. 2: (No audible response.)

13 THE CLERK: Juror No. 3.

14 JUROR NO. 3: (No audible response.)

15 THE CLERK: Juror No. 4.

16 JUROR NO. 4: (No audible response.)

17 THE CLERK: Juror No. 5.

18 JUROR NO. 5: (No audible response.)

19 THE CLERK: Juror No. 6.

20 JUROR NO. 6: (No audible response.)

21 THE CLERK: Juror No. 7.

22 JUROR NO. 7: (No audible response.)

23 THE CLERK: Juror No. 8.

24 JUROR NO. 8: (No audible response.)

25 THE CLERK: Juror No. 9.

1 JUROR NO. 9: (No audible response.)

2 THE CLERK: Juror No. 10.

3 JUROR NO. 10: (No audible response.)

4 THE CLERK: Juror No. 11.

5 JUROR NO. 11: (No audible response.)

6 THE CLERK: Juror No. 12.

7 JUROR NO. 12: (No audible response.)

8 THE COURT: Okay, thanks. Good morning, ladies and
9 gentlemen. My name is Judge Scott Rolle. You're probably
10 wondering why Judge Galloway is not here this morning. He's a
11 retired senior judge and so he was only here for the two days.
12 So I'll be taking the verdict from you in this case. Nothing
13 else has changed at all, but I did want to reconvene you to let
14 you know why you'll be seeing me when you come back in the
15 courtroom with any questions or when you reach your verdict.

16 Now that we've called the roll, you can reconvene to
17 the jury deliberation room to resume your deliberations. If
18 you have a question, write it down, knock on the door, hand it
19 to the deputy and once you reach a verdict, knock on the door
20 and let the deputy know and we'll reconvene everybody. Thank
21 you very much. Hope you had a good weekend and we'll see you
22 shortly. Actually it's Friday. It feels like Monday to me.

23 (The jury retired to deliberate.)

24 THE COURT: All right, counsel, thank you very much
25 and we'll see you --

1 MS. KING: Thank you, Your Honor.

2 THE COURT: -- when the time comes.

3 MS. KING: Thank you, Your Honor.

4 THE COURT: Thank you, Ms. King.

5 MS. KING: If I may defer to Mr. Weddle?.

6 THE COURT: You may. Thank you, Mr. Weddle, good
7 morning, sir.

8 MR. WETTLE: Good morning, Your Honor.

9 MS. KING: And if we could just have one moment? We
10 need to switch out?

11 THE COURT: Sure.

12 (Recess)

13 THE BAILIFF: All rise.

14 THE COURT: Good afternoon, everyone. Please be
15 seated. Ms. King.

16 MS. KING: Good afternoon, Your Honor, Joyce King on
17 behalf of State, the State of Maryland v. Abe Mallik.

18 MS. CHOI: Good afternoon, Your Honor. For the
19 record, Sun Choi on behalf of Mr. Abe Mallik, standing to my
20 left.

21 THE COURT: Sir, tell me your name please.

22 MR. MALLIK: Abe Arjun Mallik, Your Honor.

23 THE COURT: Do you have the note?

24 UNIDENTIFIED SPEAKER: The note?

25 THE COURT: Yeah, so they're on my, they're on my

1 desk.

2 Okay. We have two notes from the jury. You've
3 gotten a copy, Ms. King?

4 MS. KING: Yes, Honor.

5 THE COURT: Ms. Choi, you've gotten a copy?

6 MS. CHOI: I do.

7 THE COURT: Okay.

8 MS. KING: As to count, as to the first question, is
9 this correct, all our, all counts are possession, I think, a
10 simple yes, this is -- all counts are possession of child
11 pornography.

12 MS. CHOI: I agree, Your Honor.

13 THE COURT: Okay. So count, on the first question,
14 you just want me to answer yes? Is the State satisfied with
15 that --

16 MS. KING: Yes.

17 THE COURT: -- defense satisfied?

18 MS. KING: All counts are child pornography.

19 THE COURT: A simple yes?

20 MS. CHOI: Yes.

21 THE COURT: Okay. Yes, all counts --

22 MS. KING: Are child pornography, possession of --

23 THE COURT: Okay.

24 MS. KING: -- child pornography.

25 THE COURT: Okay. Now with regard to the second

1 question, they wanted a definition of possession.

2 MS. KING: Yeah, I don't think it's appropriate to
3 give them a legal definition at this point. I think that if
4 they need to hear the re-reading of what child pornography is,
5 and the definitions that are contained within that instruction,
6 that might be appropriate, but I --

7 THE COURT: Let me, let me ask you this. Did Judge
8 Galloway give them a copy of the instructions when they went
9 back?

10 MS. KING: No, and we can give them a -- I don't, I
11 have no problem with them getting a copy.

12 MS. CHOI: That's fine, Your Honor.

13 THE COURT: Okay. I usually do that. That's why I
14 was curious whether --

15 MS. KING: Yeah, I think it's appropriate.

16 THE COURT: -- he did.

17 MS. CHOI: I think that would be helpful, yes.

18 THE COURT: In fact, it keeps a lot of questions
19 down --

20 MS. KING: Yes.

21 THE COURT: -- frankly. So with, if there's no
22 objection, I will allow the jury to take a copy of the --

23 MS. CHOI: Yes.

24 THE COURT: Here's what I would say on question two.
25 You have to refer to the jury instructions that Judge Galloway

1 gave you.

2 MS. CHOI: Uh-huh.

3 THE COURT: And I'm going to give you a copy of them
4 so you can refer back to them.

5 MS. CHOI: Yes.

6 MS. KING: That's fine.

7 THE COURT: Work?

8 MS. CHOI: Perfect.

9 MS. KING: Yeah.

10 THE COURT: Works for State, works for defense.

11 MS. CHOI: Yes.

12 THE COURT: All right. If, counsel, if you don't
13 mind coming forward and both signing these with your date and
14 the time please?

15 (Discussion off the record.)

16 THE COURT: Oh, they have copies of the jury
17 instructions?

18 UNIDENTIFIED SPEAKER: Yeah, they --

19 THE COURT: I thought you meant these?

20 UNIDENTIFIED SPEAKER: No, the jury --

21 THE COURT: Judge Galloway gave it to them? Then
22 I'll just tell them to refer to the ones --

23 UNIDENTIFIED SPEAKER: Yeah.

24 THE COURT: -- that the Judge gave them.

25 UNIDENTIFIED SPEAKER: Yeah, I gave them the copies.

1 THE COURT: Excellent.

2 MS. KING: Oh, okay.

3 THE COURT: I thought that most judges did that now,
4 so I was surprised. Okay. All right. Counsel, you can step
5 back. I want to make sure the record is clear just to make
6 sure.

7 We've received two notes from the jury. The first
8 one, I'll just read it into the record even though it will be,
9 become a copy of the Court's, part of the Court's file. Can
10 the Court clarify the charges associated with each count? Our
11 current understanding based on the evidence is that Counts 1
12 through 8, the e-mail change, is distribution and that Counts 9
13 through 11 are for possession. Is this correct or are all, all
14 capitalized, counts possession?

15 Both counsel are present with the defendant in this
16 case and they have indicated to me they simply wish me to
17 answer that question by saying, yes, all counts are for
18 possession.

19 MS. CHOI: Your Honor, I would like to add something
20 to that.

21 THE COURT: Okay.

22 MS. CHOI: All counts should be knowingly possess --

23 MS. KING: I would --

24 MS. CHOI: -- because that is the actual charge of
25 each and every single count. So just for the record, to

1 preserve the record, the defense would request that the jury be
2 provided with the answer that all counts, 1 through 11, is
3 knowingly possessed child pornography.

4 MS. KING: And the State would object. The charge is
5 possession of child pornography and they have the instruction
6 that defines knowingly.

7 THE COURT: Okay. Your objection is noted for the
8 record. So we'll proceed as we discussed before.

9 Now the second question says, "Can the Court define
10 possession as it pertains to e-mail exchange? In Counts 1
11 through 8, we know these photos were sent from one e-mail
12 account to another, but none were found on any of his devices.
13 What does the law define as possession?"

14 Both counsel have asked the Court to simply tell them
15 that they need to refer back to the instructions given to them
16 by Judge Galloway and they were given copies of those and they
17 should refer back to those and that's the end of the answer.
18 Is that correct --

19 MS. KING: Yes.

20 THE COURT: -- State? Is that correct, defense?

21 MS. CHOI: Yes.

22 THE COURT: Okay. You can bring the jury in.

23 (The jury entered the courtroom.)

24 THE COURT: Okay. The Court will note for the record
25 that all 12 jurors are present. Ladies and gentlemen, thank

1 you. You've given two notes to the Court which I have
2 discussed with counsel and we're going to answer them in the
3 following way.

4 The first note you gave asked can the Court clarify
5 the charges associated with each count. Our current
6 understanding, based on the evidence, is that Counts 1 through
7 8, the e-mail exchange, is distribution, and that Counts 9
8 through 11 are for possession. Is this correct or are all
9 counts possession?" All counts are possession.

10 On the second question you asked, "Can the Court
11 define possession as it pertains to e-mail exchanges? In
12 Counts 1 through 8 we know those photos were sent from one e-
13 mail account to another, but none were found on any of his
14 devices. What does the law define as possession?"

15 The answer to that question is I, I assume that you
16 were allowed to take back a copy of Judge Galloway's
17 instructions with you, is that correct? You have those?

18 THE JURY: It is.

19 THE COURT: The answer that I have to give you is you
20 have to refer to the Judge's instructions. Look there for your
21 answer, okay?

22 All right. Thank you very much. If you have any
23 other questions, please knock on the door, or notes, and let my
24 bailiff know and when you've reached a verdict, please knock on
25 the door and let my bailiff know.

1 MS. CHOI: Thank you. Thank you, Your Honor.

2 THE COURT: Ladies and gentlemen, thank you. Did you
3 guys, you got lunch and everything, correct?

4 THE JURY: Yes. Thank you.

5 JUROR: That was very good.

6 THE COURT: All right, excellent. You're welcome.
7 This will become part of the record.)

8 (The jury retired to deliberate.)

9 THE COURT: Anything else, State?

10 MS. KING: Nothing further, Your Honor.

11 THE COURT: Anything else, defense?

12 MS. CHOI: No.

13 THE COURT: All right, counsel, thank you very much.

14 MS. CHOI: Thank you.

15 THE BAILIFF: All rise.

16 THE COURT: We're in recess.

17 (Recess)

18 THE COURT: Shortly. Ms. King, you can come on up.

19 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

20 THE COURT: Ms. Choi, you can come on up.

21 MS. KING: Good afternoon, Your Honor, Joyce King on
22 behalf of the State.

23 THE COURT: If you don't mind calling the case?

24 MS. KING: State of Maryland v. --

25 THE COURT: Yeah, thanks.

1 MS. KING: State of Maryland v. Abe Mallik.

2 THE COURT: Okay.

3 MS. CHOI: May it please the Court, Your Honor, Sun
4 Choi on behalf of Mr. Abe Mallik.

5 THE COURT: Sir, tell me your name please.

6 MR. MALLIK: Abe Arjun Mallik, Your Honor.

7 THE COURT: Okay. The jury has indicated they have
8 reached a verdict. Are you ready to receive that, Madam State?

9 MS. KING: Yes, Your Honor.

10 THE COURT: Defense?

11 MS. CHOI: Yes, Your Honor.

12 THE COURT: I assume that they received a verdict
13 sheet?

14 MS. KING: Yes --

15 MS. CHOI: Yes, Your Honor.

16 MS. KING: -- Your Honor.

17 THE COURT: Do you know? Okay. Good. You can bring
18 the jury in.

19 (The jury entered the courtroom.)

20 THE COURT: Okay. The Court will note for the record
21 all -- you may be seated, ladies and gentlemen -- that the, all
22 the 12 jurors are present. Judge Galloway probably told you
23 this, ladies and gentlemen, but let me just explain to you how
24 this works. In a minute, you're going to be asked by the clerk
25 a couple questions. The first one is, ladies and gentlemen of

1 the jury, have you reached a verdict? If you have, as you've
2 indicated, you will all say in unison, we have. The next
3 question she'll say is, who shall say for you? You will say in
4 unison, our foreperson, forewoman, foreman, what -- are you the
5 foreman, sir?

6 (No audible response.)

7 THE COURT: Okay. Who, you'll say our foreman
8 together in unison. Sir, then you will then stand up and she
9 will ask you the questions on the verdict sheet and you will
10 give the answers to them. Then there will be a harkening and
11 perhaps some polling, things of that nature, okay? So that's
12 how that's going to work. Madam Clerk. Oh, go ahead.

13 VERDICT

14 THE CLERK: Ladies and gentlemen of the jury, have
15 you agreed upon your verdict?

16 THE JURY: We have.

17 THE CLERK: Who shall speak for you?

18 THE CLERK: Our foreman.

19 THE COURT: Okay, Mr. Foreman, please stand.

20 THE CLERK: How do you found the defendant, Abe
21 Mallik, guilty or not guilty, as to the charges of Count 1,
22 possession of child pornography?

23 THE FOREPERSON: Guilty.

24 THE CLERK: As to Count 2, how do you find the
25 defendant as to the charge of possession of child pornography?

1 THE FOREPERSON: Guilty.

2 THE CLERK: As to Count 3, how do you find the
3 defendant as to the charge of possession of child pornography?

4 THE FOREPERSON: Guilty.

5 THE CLERK: As to Count 4, how do you find the
6 defendant as to the charge of possession of child pornography?

7 THE FOREPERSON: Guilty.

8 THE CLERK: As to Count 5, how do you find the
9 defendant as to the charge of possession of child pornography?

10 THE FOREPERSON: Guilty.

11 THE CLERK: As to Count 6, how do you find the
12 defendant as to the charge of possession of child pornography?

13 THE FOREPERSON: Guilty.

14 THE CLERK: As to Count 7, how do you find the
15 defendant as to the charge of possession of child pornography?

16 THE FOREPERSON: Guilty.

17 THE CLERK: As to Count 8, how do you find the
18 defendant as to the charge of possession of child pornography?

19 THE FOREPERSON: Guilty.

20 THE CLERK: As to Count 9, how do you find the
21 defendant as to the charge of possession of child pornography?

22 THE FOREPERSON: Guilty.

23 THE CLERK: As to Count 10, how do you find the
24 defendant as to the charge of possession of child pornography?

25 THE FOREPERSON: Guilty.

1 THE CLERK: As to Count 11, how do you find the
2 defendant as to the charge of possession of child pornography?

3 THE FOREPERSON: Guilty.

4 THE CLERK: Ladies and gentlemen of the jury, harken
5 to your verdict for the Court as recorded it. Your foreperson
6 states that the defendant, Abe Mallik, is guilty and so you
7 all, if so, please respond, I do.

8 THE JURY: I do.

9 THE COURT: Would anybody like the jury polled?

10 MS. CHOI: No, Your Honor.

11 THE COURT: No? Okay.

12 MS. CHOI: Oh, actually, yes.

13 THE COURT: Yes? All right. If you don't mind,
14 Madam Clerk?

15 THE CLERK: No. 12, do you find, is the verdict
16 guilty?

17 JUROR NO. 12: Yes.

18 THE CLERK: Juror 11, do you find the verdict as
19 guilty?

20 JUROR NO. 11: Yes.

21 THE CLERK: Juror 10, do you find the verdict as
22 guilty?

23 JUROR NO. 10: Yes.

24 THE CLERK: Juror No. 9, do you find the verdict as
25 guilty?

1 JUROR NO. 9: Yes.

2 THE CLERK: Juror No. 8, do you find the verdict as
3 guilty?

4 JUROR NO. 8: Yes.

5 THE CLERK: Juror No. 7, do you find the verdict as
6 guilty?

7 JUROR NO. 7: Yes.

8 THE CLERK: Juror No. 6, do you find the verdict as
9 guilty?

10 JUROR NO. 6: Yes.

11 THE CLERK: Juror No. 5, do you find the verdict as
12 guilty?

13

14 JUROR NO. 5: Yes.

15 THE CLERK: Juror No. 4, do you find the verdict as
16 guilty?

17 JUROR NO. 4: Yes.

18 THE CLERK: Juror No. 3, do you find the verdict as
19 guilty?

20 JUROR NO. 3: Yes.

21 THE CLERK: Juror No. 2, do you find the verdict as
22 guilty?

23 JUROR NO. 2: Yes.

24 THE CLERK: Juror No. 1, do you find the verdict as
25 guilty?

1 JUROR NO. 1: Yes.

2 THE COURT: Okay. Ladies and gentlemen, on behalf of
3 the citizens of Frederick County and all of the parties and the
4 court system here, we appreciate your service. We understand
5 we've taken you out of your lives for, I think, three days,
6 four days, something of that nature, and we do very much
7 appreciate it. This is a civic duty that you've done and we do
8 appreciate the time that you've given us.

9 You are now free to discuss the case with anybody you
10 wish. If the lawyers want to talk to you and you're willing to
11 do that, you can. You do not have to. If you want to just
12 leave and not speak of it again, you're welcome to do that, but
13 you are free to, to speak about it if you wish.

14 Again, thank you, you're free to go. If there's any
15 belongings you have back in the jury room, you can go pick them
16 up and that's where you'll leave from. And you'll get your
17 cell phones back as well. And, again, thank you very much.
18 Please have a great weekend and we appreciate your service.

19 (The jury was discharged.)

20 THE COURT: State as to sentencing.

21 MS. KING: Your Honor, I believe that Judge Galloway
22 indicated to us that he would want a presentence investigation
23 as well as a full psychosexual evaluation prior to sentencing.

24 THE COURT: Okay.

25 MS. KING: If the Court could order that? The State

1 would also make a motion. There are images of child
2 pornography that were entered into evidence. If we could have
3 that placed under seal?

4 THE COURT: Okay.

5 MS. CHOI: That is correct, Your Honor. The Judge
6 was going to order the presentencing.

7 THE COURT: All right. This Court will order a PSI,
8 presentence investigation, and a psychosexual evaluation to be
9 included. The child pornography images that were introduced in
10 evidence are hereby sealed. How long do you want for
11 sentencing?

12 MS. KING: I'll defer to counsel.

13 THE COURT: Ms. Choi?

14 MS. CHOI: I would say at least an hour.

15 THE COURT: Okay, an hour? And how much time do you
16 want between now and sentencing?

17 MS. CHOI: Your Honor, for the PSI, I would ask for
18 approximately 30 days.

19 THE COURT: Okay. I'm going to go eight weeks out.

20 MS. CHOI: Okay.

21 THE COURT: Will that work? Okay.

22 MS. CHOI: That's --

23 THE COURT: All right. This sentencing will be set
24 in for Thursday, August 3, 2017, at 9:00 a.m. State as to
25 bond?

1 MS. KING: The State would make a motion to revoke
2 bond at this time.

3 THE COURT: Defendant's bond is revoked.

4 MS. CHOI: Your Honor, what was the date of that?

5 THE COURT: August --

6 MS. KING: 3rd.

7 UNIDENTIFIED SPEAKER: Third.

8 THE COURT: -- 3rd, correct. That's a Thursday at 9
9 o'clock.

10 MS. CHOI: Your Honor, at this point could I request
11 for -- can we approach?

12 THE COURT: Sure can.

13 (Bench conference follows:)

14 THE COURT: Yes?

15 MS. CHOI: I'm just asking the State, is there a
16 reason --

17 MS. KING: The State would move to revoke the bond
18 based on the evidence of him communicating with minor children
19 and the nature of the charges, I think it's appropriate to
20 revoke his bond.

21 MS. CHOI: Could we, well, I don't think --

22 MS. KING: You could, you could request a bond --

23 MS. CHOI: -- Your Honor --

24 MS. KING: -- review.

25 MS. CHOI: Yeah. I mean as soon as possible because

1 he has not done anything for the last year in terms of any kind
2 of safety communication or any of that. So at this point I
3 don't think that's appropriate, Your Honor --

4 THE COURT: Okay.

5 MS. CHOI: -- and it's a first-time offender and the
6 guidelines were literally probation to six months.

7 THE COURT: Okay.

8 MS. CHOI: I would ask that Your Honor consider the
9 bond.

10 THE COURT: Okay. I'm, I'm going to revoke it now,
11 but I will consider a bond hearing if you'd like.

12 MS. CHOI: Okay.

13 THE COURT: Just file the motion and I'll set it in.

14 MS. CHOI: Okay.

15 THE COURT: Okay? Because I, I want more information
16 because right now the sentence that he's facing is substantial.

17 MS. CHOI: Okay.

18 THE COURT: Okay?

19 MS. CHOI: I'll file it right away.

20 MS. KING: Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 MS. KING: Thank you.

23 (Bench conference concluded.)

24 THE COURT: Thank you.

25 MS. CHOI: Thank you, Your Honor.

1 THE COURT: Yes.

2 MS. CHOI: For the record, I will go ahead and file
3 for the defendant the motion for --

4 THE COURT: Okay.

5 MS. CHOI: -- a bond review.

6 THE COURT: And I'll, I'll hear that, okay?

7 MS. KING: Thank you, Your Honor. If I may be
8 excused?

9 THE COURT: You may. Thank you. Ms. Choi, you're
10 excused as well.

11 MS. CHOI: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (The proceedings were concluded.)
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✓ Digitally signed by Tracy Hahn

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Frederick County in the matter of:

Criminal No. 10-K-16-059271

STATE OF MARYLAND

v.

ABE MALLIK

By:


TRACY HAHN
Transcriber

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	:	
STATE OF MARYLAND	:	
	:	
v.	:	Case No. 10-K-16-059271
	:	
ABE MALLIK,	:	
	:	
Defendant.	:	
	:	
-----X	:	

Frederick, Maryland

October 3, 2017

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

-----X
:
STATE OF MARYLAND :
:
v. : Case No. 10-K-16-059271
:
ABE MALLIK, :
:
Defendant. :
:
-----X

Frederick, Maryland

October 3, 2017

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE MICHAEL M. GALLOWAY, JUDGE

APPEARANCES:

FOR THE STATE:

JOYCE R. KING, Esq.
Assistant State's Attorney
Frederick County State's Attorney's Office
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Frederick, Maryland 21705

FOR THE DEFENDANT:

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P R O C E E D I N G S

THE COURT: Ready to proceed?

MS. KING: Yes, Your Honor. The State of Maryland calls, calling State of Maryland versus Abe Mallik, 16-059271.

MS. CHOI: Good afternoon, Your Honor. May it please the Court, Sun Choi on behalf of Mr. Abe Mallik, standing to my right.

THE COURT: Good afternoon. We are here today for disposition. This matter was tried before a jury who found defendant guilty, I believe, on 11 counts.

Let me start with Madam State. What's the State's position on sentencing?

MS. KING: Thank you, Your Honor. Your Honor, as you stated, after a four-day trial, the jury found the defendant guilty of 11 counts. Because four months has passed, the State would like to take an opportunity just to review some of the facts before Your Honor.

The State is asking for the top of the guidelines. The State is asking for 20 years, suspend all but two years of active incarceration.

On March 2016, as Your Honor recalls, a cyber tip was forwarded to the Frederick County Sheriff's Department by the National Center for Missing and Exploited Children. Detective Snyder confirmed that child pornography was identified, being uploaded to the defendant's e-mail address.

1 Your Honor recalls, during the trial, it was
2 confirmed this was the defendant's e-mail address, the
3 defendant's IP address, and the defendant's HideMyAss account,
4 that that e-mail was accessed over 100 times after that e-mail
5 was sent.

6 On April 21st, 2016, a search warrant was conducted
7 on the defendant's home, and over 200 images of child erotica
8 were located by the forensic analyst, Mr. Gibson, on the
9 defendant's laptop.

10 Mr. Gibson testified, during trial, that the
11 defendant logged onto that laptop over 110 times; that these
12 images were manually saved; that these folders were manually
13 created; and that these folders and images were most frequently
14 viewed and used.

15 The State also called Agent Dixon (phonetic sp.), who
16 confirmed that there was no intrusion to the defendant's
17 laptop.

18 Your Honor, in addition to the child pornography, the
19 200 images of child erotica, the detectives also located
20 communications in the defendant's e-mail with minor females.
21 Those females purported themselves to be the ages of 13, 16,
22 and Georgia detectives located the third individual as being 12
23 years old.

24 The other thing that was noteworthy about those
25 communications is that those images of the females that he was

1 communicating with were not just on his e-mail; they were also
2 located on his laptop.

3 Also, as a point of clarification, I did note, in Ms.
4 Choi's sentencing memorandum, or actually in the evaluation,
5 that defendant said that Ms. Choi contacted and confirmed that
6 these were not minors. That's actually a misstatement. Ms.
7 Choi contacted other individuals that were in communication
8 with the defendant, but not these three individuals. No
9 contact were made other than the Georgia Police Department.

10 The defendant has submitted, Your Honor, has received
11 two evaluations: one from Parole and Probation, the
12 presentence investigation; and the other, Dr. Holt's
13 evaluation.

14 Ms. Choi did reference two other evaluations: the
15 one by Dr. Marshall (phonetic sp.) that was conducted
16 pretrial -- and I'd just like to state for the record that Ms.
17 Marshall did not reevaluate the defendant once he was
18 convicted, and we did confirm that new tests, other tests would
19 have been conducted for a reevaluation after a conviction.
20 That became moot because Dr. Holt's evaluation took place.

21 Dr. Wu, who's referenced in the defendant's
22 sentencing memorandum, was noted, and admitted, during his
23 evaluation, to Dr. Holt that the defendant saw the psychiatrist
24 three times for the purposes of anxiety; that was, did not see
25 this individual regarding any type of sexual evaluation. So

1 the State would put little to no weight on that short letter
2 from Dr. Wu.

3 Now, focusing, Your Honor, on Dr. Holt's evaluation.

4 The State would like, wants to point out a very
5 important line, and I did call Dr. Holt, and to speak with her
6 to confirm this. And the quote is, quote, it should be noted
7 that the accuracy of this opinion is limited by the defendant's
8 tendency to answer questions to place himself in the favorable
9 light. The defendant adamantly denies the charges.

10 And Your Honor is very familiar with evaluations,
11 having done drug court and -- if an individual is unwilling to
12 admit they have a problem, it's difficult to assess what type
13 of treatment that individual needs. And the reports, the State
14 would argue, in inconclusive for that reason.

15 In Dr. Holt's diagnostic discussion, there is another
16 quote that says that there is a poverty of additional
17 information to offer diagnosis at this time. And again, in the
18 assessment of the defendant's future sex violence, that she was
19 not able to use any instruments in this assessment.

20 She speaks about a risk assessment that was developed
21 to predict sexual recidivism among individuals with convictions
22 of child pornography specifically, but that it was newly
23 developed so that she was not able to implement that.

24 Regarding diagnosis of pedophilic disorder, the
25 individual would need to admit that he was having recurrent

1 sexual arousing fantasies of prepubescent children which, of
2 course, the defendant did not.

3 This evaluation by Dr. Holt does not conclude he has
4 no interest; it concludes that the defendant maintains he has
5 no interest. So the State would like to take issue with that
6 because these are the same self-serving statements that the
7 defendant said while on the stand; that he did not see these
8 images; that he has no interest in children.

9 And the jury has found that not credible. The State
10 has found that not credible. And he's before you, having been
11 found guilty of possessing, knowingly possessed 11 counts of
12 child pornography.

13 I think one of the most telling parts of the
14 evaluation, Your Honor, is that the defendant continues to show
15 no remorse or accountability. Several times in Dr. Holt's
16 evaluation, the defendant refers to himself as the victim.

17 Dr. Holt also notes the defendant's changing story:
18 that first, it was his neighbor with the IT background; then it
19 was his supervisors at work that were setting it up; now, at
20 the time of the evaluation, he says that it was a random hack.
21 He also states it was the overzealous prosecutor, or perhaps,
22 the tampering of the sheriff's department who placed the child
23 pornography on his computer.

24 Your Honor, that lack of accountability, the lack of
25 remorse, I believe, shows that he is, it is going to be

1 difficult for any type of treatment that is necessary for these
2 types of convictions.

3 The other thing the State wants to address that was,
4 Ms. Choi brought up in the sentencing memorandum, is the
5 State's initial plea agreement. And the State takes issue with
6 this for several reasons.

7 One, we believe that it's bad form to discuss plea
8 negotiations at this state. The plea offer was rejected. The
9 defendant went to trial, was convicted of not one count, but 11
10 counts. And we are in an entirely different disposition today.

11 Furthermore, it takes it out of context because the
12 original plea offer was actually three counts, State to
13 recommend 15 years, suspend all but 18 months, and the defense
14 is free to argue. And that was relayed on December 7th, 2016,
15 and documented on Case Management System. That's when Ms. Choi
16 and I first reviewed the facts of this case.

17 I returned from maternity leave, everybody was aware
18 of that, with one month to prepare for this trial. We had
19 witness availability issues. We had evidentiary issues we had
20 to overcome. The State actually filed a motion for continuance
21 May 2nd, requesting that we postpone the trial to give the
22 State adequate time to find and secure a rebuttal expert,
23 because the State was given notification of the defense expert.
24 That postponement was objected to and denied. And it was at
25 that time, the State made a plea offer that did not require

1 jail time.

2 Now, the State feels in an awkward position having to
3 defend my argument here for why I needed to make a position,
4 but in no way, did that represent that the State does not take
5 these charges seriously; that the State does not believe that
6 people, defendants convicted of possession of child pornography
7 should not be punished and sanctioned in this way. The State
8 takes these charges very seriously.

9 Furthermore, more was revealed during trial: the
10 communication with the minors; the 200 images of child erotica
11 that we were able to review; the expert testimony regarding
12 those images.

13 We were able to notify that these were real victims
14 during -- Your Honor saw at the presentence evaluation. We
15 included the victim impact statement from the, some of the
16 children included in these photos. One of these victims lived
17 here in Maryland.

18 And that these, those are the victims. The defendant
19 is not the victim. The children in these photos, the children
20 who have to know that the documentation of their being raped
21 and molested is out there on the Internet, those are the
22 victims in this case.

23 So there is another section in the sentencing
24 memorandum where Ms. Choi cites a paragraph from Detective
25 Snyder's testimony about real live victims. Yes, this is not a

1 case of child molestation. We're aware of that. This is a
2 case of possession of child pornography, and the images of
3 those children are real people. And they're confirmed, and it
4 was attached in the presentence evaluation from the detectives
5 and FBI agents that spoke with those victims. The ongoing
6 effect and harm is life-long.

7 And those were three series, Your Honor, and Your
8 Honor has those documents: the little Melissa series, where
9 the little girl in those, that series was 12 and 13 years old
10 in those images; the YNKD series, that was the abuse that
11 occurred here in Anne Arundel County, Maryland, the victim in
12 that case was ages 3 and 4; and the blue pillow series, the
13 victim in that was 7 through 12 in those images.

14 And in that, the blue pillow series is the one where
15 you actually see the letter from that victim, saying that, how
16 she has to live with this. She says, quote, it makes me really
17 mad when I know that I'll be on the Internet for like ever, but
18 it somehow makes me more mad when I know it could happen to a
19 lot of other girls. And that is straight from the mouth of one
20 of the victims.

21 Your Honor, considering the factors of punishment,
22 rehabilitation, deterrence, the State does believe that a top
23 of the guidelines sentence is appropriate.

24 This type of denial, lack of remorse, we do believe
25 is dangerous. Dr. Holt stated, in her evaluation, quote, Mr.

1 Mallik's denial in the instant offense may pose a barrier
2 toward treatment efficacy. How can we protect the community?
3 How can someone like this be amenable to treatment and get the
4 help that he needs?

5 Your Honor, the State does believe that 20 years,
6 suspend all but two years in an appropriate sentence. We
7 recommend, and join the recommendation of the presentence
8 investigation, and Dr. Holt that the defendant be on five years
9 of supervised probation; that he be a registered sex offender,
10 I believe this is Tier 1 offense; that he comply with the
11 specialized sex offender supervision per Dr. Holt -- and again,
12 Dr. Holt would not be recommending sex offender treatment if
13 she believed that there was, it wasn't necessary -- offense
14 specific treatment; medication; polygraph testing; computer
15 monitoring; electronic tracking; curfew geographic
16 restrictions; and no unsupervised contact with minors.

17 And Your Honor, again, child pornography, I cannot
18 emphasize it enough, I believe that there was a lot of
19 downplaying of what child pornography is. And the State takes
20 this very seriously. We believe it's important to protect our
21 community because the possession of child pornography results
22 in the perpetual harm of these victims, and it endorses and
23 normalizes and validates this industry that exploits children.

24 So with that, Your Honor, the State is asking for 20
25 years, suspend all but two.

1 THE COURT: Ms. Choi?

2 MS. CHOI: Thank you, Your Honor. Again, may it
3 please the Court, Sun Choi on behalf of Mr. Abe Mallik.

4 THE COURT: You can be seated, Mr. Mallik.

5 MS. CHOI: Your Honor, I want to start off by saying
6 that members of Mr. Mallik's family is here today. They drove
7 from far away to be here to support Mr. Mallik. We have two
8 older sisters, a brother-in-law, as well as esteemed leaders in
9 the Indian community who are sitting in the back seat in
10 support of Mr. Mallik. One of them is a chaplain, Your Honor.

11 Your Honor, we're here before this Court to ask for
12 leniency with regard to the sentencing that will be imposed.
13 Your Honor has abundant information with regard to Mr. Mallik's
14 background, his personal history, and whether or not he would
15 be a risk for future sexual recidivism.

16 Your Honor, the PSI that was provided, during the
17 time that we were waiting for sentencing, stated very clearly
18 that Mr. Mallik is a citizen, he's very proud of it, he's had
19 family support, as Your Honor can see. His wife is now the
20 only breadwinner of the family, and she has had to go to work,
21 and she was trying very much to come and may actually make it.

22 Your Honor, Mr. Mallik has an adult daughter who
23 lives in New York, and she wrote a letter to Your Honor with
24 regard to the support that she conveys. Her father is decent
25 and honest, and has always been a role model for her. She has

1 absolutely no hesitation whatsoever that he will continue to
2 raise the 14-year-old sister that is still a minor, Your Honor.

3 Throughout this ordeal, family members have stepped
4 up, Your Honor, not only financially, but emotionally. They
5 have helped him through a lot, and they continue to help him.
6 He has a support network.

7 With regard to treatment, Your Honor, Mr. Mallik
8 voluntarily, on his own volition, not by counsel's
9 recommendation, sought to get treatment for his anxiety, for
10 his stress, for the astronomical anxiety that this case has
11 caused him.

12 He has been in treatment with Dr. Ling Wu, who has
13 provided the therapeutic services that Mr. Mallik believes that
14 he needs. She gave him a hug at the very last appointment,
15 letting him know that she supports him, she believes in him,
16 that he is a very low risk, and that she will continue to work
17 with him because he wants that, Your Honor.

18 With regard to education and employment history, as
19 Your Honor can see, he is very well-educated. He put himself
20 through school, financially working very hard, not asking for
21 any assistance. And with this employment history, Your Honor,
22 he has had stellar evaluations. He's had no problems with
23 coworkers. He recently had the employer who had some issues
24 with him, but in terms of his work ethic and work history, he's
25 had no problems whatsoever.

1 With regard to criminal history, Your Honor, it is
2 absolutely clear that Mr. Mallik has never been arrested,
3 charged, convicted of any kind of felony, misdemeanor, or any
4 jurisdiction.

5 Throughout his life, Your Honor, he's always been
6 law-abiding, he's always followed the rules. He has done
7 everything in his power to make sure other people do the same
8 thing.

9 With regard to Dr. Holt's evaluation, it was the
10 State's court evaluator, Your Honor, that provided the
11 psychological evaluation, and it is very clear that her
12 conclusion is low concern for sexual recidivism. The reason
13 why that is, is because she is a professional; she is in this
14 occupation; she does this day in and day out; she obviously
15 doesn't have the concerns that the State is raising.

16 The State is raising certain issues with her report.
17 It's the State's court-ordered evaluator, Your Honor. She does
18 this, not only after the conviction, but she took into
19 consideration the mountains of information that was conveyed to
20 her, all the police reports that don't get to come into
21 evidence. She had, at her disposal, all kinds of hearsay, all
22 kinds of misinformation, every single thing, on top of a two-
23 hour, 20-minute interview with Mr. Mallik. And based on that
24 abundant information, the conclusion was exactly what Dr.
25 Lethay (phonetic sp.) Marshall concluded -- pretrial, pre-

1 charge, the same low concern.

2 Your Honor, it's clear, there are certain issues with
3 regard to Dr. Holt's evaluation where she didn't have much
4 information.

5 When Ms. King quotes that there is no, there's no
6 poverty of information that would offer a diagnosis at this
7 time with regard to the diagnostic discussion that's on page
8 12, it's because, based on her professional history and
9 experience, he didn't display that, those factors. And as a
10 result, she couldn't conclude that he had those issues.

11 So we don't take issue, Your Honor, with this report
12 because this is her profession. This is what she does.

13 With regard to Dr. Lethay Marshall, this was done
14 proactively, Your Honor. He decided, before he was even
15 charged, that if there's concern by the State, he is going to
16 get evaluated as much as possible, and that's exactly what
17 happened.

18 So here we have pretrial, after trial, two
19 professional psychologists who say he's a low concern. He is
20 now under treatment with Dr. Wu, and will continue to be so,
21 Your Honor. She will monitor him and help him through all of
22 this.

23 Now, with regard to the State's plea offer, that's
24 the very first time I actually heard that plea offer, because
25 when I met with Ms. King, I got glimpses of the photographs; I

1 didn't actually have a chance to look through all of it because
2 there were so many of the child erotica, as she talked about,
3 but the plea offer, whether it was in writing, I don't have
4 that. The plea offer that I do have is exactly what's in the
5 State's defense memorandum -- I'm sorry -- the defense
6 sentencing memorandum. That's the plea offer I have.

7 And regardless of whether or not there was a plea
8 offer, I certainly didn't get one in writing, the end result
9 is, before the eve of trial, the State's plea offer, based on
10 whatever excuses the State has provided to Your Honor, the
11 inference is there.

12 The Defense never stated that the State believes that
13 he's not a danger to the community. There's an inference
14 there, Your Honor, like all plea offers. There's an inference
15 that if it's a no jail, no registration of a sex offender plea
16 offer, then clearly, there is no danger to the community.

17 That's an argument that an advocate, such as myself,
18 would have to make to Your Honor. That's my job. And that's
19 what I'm going to do, because that's the inference we can take
20 from that plea offer. It was made with sincerity. It is made
21 without conditions. It is made.

22 Your Honor, with regard to the minor children, there
23 is no way in hell that the Defense is ever going to minimize
24 the fact that there are victims involved in a case like this.
25 They may be a lot older now, but there is no way we would ever

1 minimize that, or make it frivolous.

2 What I did want to emphasize, and what the State's
3 witness, the State's star witness, Detective Jason Snyder
4 testified to, under oath, was that there was no real life
5 children in contact with Mr. Mallik. That was what his
6 testimony was, under oath, and that's what I needed to
7 emphasize because it was so important to me, to Mr. Mallik,
8 that no live children were actually contacted during the
9 alleged incident.

10 Now, Your Honor, the State's computer analyst,
11 forensic analyst, even concluded this was the very first of its
12 kind. In all of his experience, he has never had a situation
13 where a virtual private network was used in a child pornography
14 case.

15 Because of the unique set of circumstances, I
16 actually believe that that was the reason why the State's plea
17 offer was what it was, because it is unusual. It is very
18 unusual that this set of circumstances for this particular case
19 existed, and that's what the State's expert testified to.

20 Because Mr. Mallik knows, in his heart, that he was
21 innocent, he just couldn't take a plea offer that obviously was
22 something that was very favorable if he was guilty. He would
23 have been crazy to actually give up that plea offer, Your
24 Honor. But because he felt, in his heart, that he was
25 innocent, he just had to reject it.

1 Now, the victim information provides that there are
2 no injuries. That is from the State's documentation of the
3 victims that were alleged to have been involved in this case,
4 Your Honor, so I want to emphasize that to Your Honor as well.
5 Because it's in the sentencing guidelines where there are
6 factors, and it says, are there any injuries to the victims,
7 and it's stated clearly, from the State, that there was not.

8 Your Honor, with regard to the minor children and the
9 allegations that I didn't speak to the three minors that are
10 involved in this particular case, the only way I can contact
11 potential victims is from the police reports that the State has
12 provided to me. I didn't pick these people out of thin air.
13 Whatever was listed, I contacted them to make sure that they
14 were not minors.

15 The one minor that Mr., that Detective Snyder had
16 testified to, said she has no idea who Mr. Mallik is. She has
17 absolutely no clue, no information. That was the gist of it,
18 Your Honor.

19 So whatever contacts I made with whoever it was that
20 was involved in this case, all came from the State's
21 information, and I concluded, based on my conversations, as an
22 officer of this Court, proffering to Your Honor that they were
23 adults, and that's exactly what they were. So if they had
24 other minors, Your Honor, that information was not revealed to
25 us. We were not able to investigate that.

1 And in fact, Your Honor, even asked Detective Snyder,
2 at one point, did you actually talk to that girl, the minor?
3 How can you determine if she was minor? So Your Honor actually
4 probed that issue. And Detective Snyder then admitted, I
5 didn't personally speak to her. It was through law enforcement
6 in Georgia that confirmed that she was a minor.

7 Now, Your Honor, Mr. Mallik has served five days and
8 four nights in jail. After his conviction, the State
9 immediately asked for the revocation of his bond. Judge Scott
10 Rolle then granted that and sent him to jail.

11 When I took objection to it, Your Honor, Judge Rolle
12 said, go ahead and file a bond review, which I did that day.
13 That bond review was then heard on June 6th, 2016, by Judge
14 Richard Sandy.

15 At that point, Your Honor, we were able to show that,
16 in jail, he overheard threats against his life. He was then
17 placed in solitary confinement 23 hours a day for the time that
18 he was in jail. He lost six pounds. It's not just about him,
19 Your Honor. It was that he was very fearful. He did feel that
20 he was innocent, and he was in jail and served that time.

21 But before he was released, Your Honor, on June 6th,
22 it was very clear that Mr. Mallik was going to do everything
23 that he humanly could to make sure to comply with all of the
24 requirements that the bond condition imposed on him.

25 And as such, we listed 10 different factors in which

1 he canceled his Internet service, he bought a foot phone, he
2 actually sent his 14-year-old daughter to an aunt in Hawaii so
3 that she can start school there, so that there's absolutely no
4 concern whatsoever from this Court, from the community, that he
5 would have any contact with minors.

6 He was calling in. He made sure that he spoke to the
7 person, that would register him as sex offender, immediately.
8 He did that all, Your Honor, because he wanted to follow all of
9 the rules. He didn't skip out on any of those rules. And he
10 did that, Your Honor, from day one.

11 Not only was he compliant after he was released on
12 the bond review, he was compliant also after he was charged.
13 He, in essence, has been on probation for almost 21 months,
14 Your Honor. Since the time that he was charged, up until the
15 time he was convicted, there have been no pending cases, there
16 have been no problems whatsoever.

17 Mr. Mallik went about his business, kept to himself,
18 made sure that he didn't cause any issues in the community or
19 with the Court. That's who Mr. Mallik is. He follows the
20 rules.

21 Now, the PSI recommendation states that incarceration
22 may be appropriate, is appropriate, but merely due to the
23 nature of the offenses and the age of the victims involved.

24 Now, there's nothing else that indicates that he
25 should be incarcerated, other than the fact that there are,

1 there was a conviction. Nothing, in essence, changed from the
2 time that he was on pretrial supervision, where he was allowed
3 out-of-state visits, Your Honor, for religious purposes, on his
4 own, unsupervised, three times. He called in every time. Home
5 visits were successfully concluded.

6 There were no other concerns by the PSI, the
7 probation agent. The State didn't bring that up, but I'm
8 telling Your Honor, the PSI states very clearly, Mr. Mallik
9 would be a good candidate for probation.

10 Now, Your Honor, with regard to the time that he did
11 serve, if Your Honor feels compelled that there is
12 incarceration that has to be imposed, we're asking Your Honor
13 to consider time served, for what he has already provided.

14 In addition, the other option is, obviously, home
15 detention, and the information that I provided to Your Honor is
16 attached at the end. In essence, home detention would be as if
17 he's incarcerated because of the monitoring involved. And so
18 we ask that Your Honor consider that option if there is no
19 others available.

20 Your Honor, Mr. Mallik has been, I guess, an ideal
21 candidate for probation. He has sought treatment, not the way
22 the State wants him to treat, get treatment for. He will do
23 whatever Your Honor requires him to do because his life depends
24 on it. For somebody who has followed the rules, as Your Honor
25 can see from the PSI, and has done everything in his power that

1 he's supposed to do, if Your Honor says jump, he will ask how
2 high. That's the kind of person he is.

3 The community is not in danger, Your Honor. There's
4 no evidence of that. There's no reason, there is no good
5 beneficial reason to put him in jail.

6 The State then, after the day that he was released,
7 on that day, filed a second emergency bond review. And during
8 that second bond review, it was very clear that the State
9 wanted their pound of flesh, and the judge was not going to
10 give it, because the judge didn't really want to hear from me.
11 The judge questioned the State, why, what has changed from the
12 time that he was released until the time the second bond review
13 was held? Nothing. That bond, that emergency bond review was
14 denied.

15 Your Honor, there is really no factor, other than the
16 conviction, in and of itself, that would change what Mr. Mallik
17 would do on probation or in jail. Nothing has changed other
18 than that conviction. And that is a huge factor, I understand
19 that; however, all of the evidence, all of the facts, as
20 alleged by the State, none of that has actually changed.

21 And so we don't have any concern -- we, meaning Dr.
22 Holt, Dr. Marshall, Dr. Wu -- do not have concerns that he
23 would be a danger to the community, Your Honor.

24 The guidelines in this case is zero to two. I'm
25 asking Your Honor, based on the unique set of circumstances

1 that exist in this case, that Your Honor impose no jail; that
2 Your Honor impose the conditions that you want him to fulfill
3 and satisfy; but that this case, this particular set of
4 circumstances, with this person, doesn't warrant jail time.

5 The one last point, Your Honor, that I wanted to
6 touch upon is that the facts are highlighted from the State's
7 position because it is inflammatory. And of course, the State
8 would want Your Honor to remember how inflammatory it is.

9 But we're at sentencing now. We're at sentencing,
10 and we are trying to prove to Your Honor that Mr. Mallik would
11 do very well on probation; that he has the support and the
12 network that will help him if there is any problems; that he's
13 under treatment, voluntarily; and would do well if he was in
14 the community. His career is lost. The sooner he can look for
15 a job to help support his struggling family, the better the
16 community would be.

17 Your Honor, based on those reasons, the Defense is
18 asking Your Honor to not incarcerate this man; to remember all
19 of the little factors that came out at trial that caused pause
20 for concern: the State's witness saying that he has never seen
21 this kind of situation before; the detective saying that he
22 hasn't spoken to that minor. Those are important factors, Your
23 Honor, and so I would ask, respectfully, that Your Honor not
24 impose any jail sentence at this time.

25 THE COURT: Does Mr. Mallik wish to say anything?

1 MS. CHOI: Mr. Mallik?

2 THE DEFENDANT: Yes, sir. The last few months have
3 been very, very arduous, Your Honor. My daughter's been, my
4 young daughter's been separated from, from me. My wife and I
5 have been going through a very difficult time. I don't have a
6 job. And I'm going to be losing the house that we live in soon
7 as well.

8 So this, I, I think, in terms of a penalty, I think
9 I've paid a very, very huge penalty, Your Honor, so far,
10 including the biggest penalty is not having my daughter, 14-
11 year-old daughter close by. The other penalty is losing my
12 job. The other penalty is losing my house.

13 In terms of being penalized, I think, from the big
14 picture, I never, a year or two years ago, never foresaw any of
15 this coming at all. And in terms of being penalized, I think
16 I've been penalized to a point that I think there's, I've, I've
17 paid a lot, in fact, for, for these things. But, but I, I will
18 follow whatever the Court decides, Your Honor. If you, you've
19 heard the case, so --

20 THE COURT: Let me ask Ms. King, what would you
21 suggest be the conditions of probation?

22 MS. KING: As stated, Your Honor, by the PSI, as well
23 as Dr. Holt, the typical supervision for possession of child
24 pornography is five years of supervised probation, register as
25 a Tier 1 sex offender. And they have specialized sex offender

1 supervision specifications that I think need --

2 THE COURT: Polygraph for --

3 MS. KING: Correct. Polygraph, medication, computer
4 monitoring, electronic tracking, and curfew geographic
5 restrictions, as well as the no unsupervised contact with
6 minors.

7 THE COURT: Well, I think both Ms. King and Ms. Choi
8 make some very valid points.

9 During my tenure on the bench, it's been my sad duty
10 to preside over a number of cases involving sexual abuse of
11 minors, in some instances, relatively small children.

12 I suppose the question is, in this type of case, how
13 is defendant, who has he victimized, I suppose would be the way
14 of putting it. And child pornography, like many crimes,
15 illicit, illegal crimes, depends on having a viewership. It
16 depends on having people who are interested in looking at child
17 pornography.

18 Without those people, then there would be no profit
19 associated with it, and the problem would not exist in any real
20 sense because -- and it's kind of like, and people make this
21 argument regarding drugs, without people who want to use drugs,
22 then no one, if you don't have a customer, there is no one to
23 sell to.

24 But with children, in these kinds of cases, and of
25 course, there's, there are all types of pornography that are

1 available -- some on the Internet, others, other types of
2 pornography on the printed page, photographs, all kinds of
3 things -- but with children, I think the difference is, we are
4 so repulsed by the notion that someone would abuse a child in
5 this way.

6 And I think society looks at it, and I've had jury
7 trials where people will come in -- not knowing anything about
8 the individual, other than he or she is charged with a sex
9 crime involving a child -- and they just say, I will not listen
10 to it, I don't want to hear it. Some people will come in and
11 say, I can tell by looking at that individual, that he's
12 guilty.

13 So society has laid down some pretty tough penalties
14 for this kind of case. 20 years for essentially looking at
15 pictures.

16 Now, the other question that begs to be asked is,
17 whether or not someone who views child pornography will then
18 act upon that obsession, perversion, and actually follow
19 through and commit acts of sexual abuse against the child. And
20 I'm sure there are people who view child pornography who do, in
21 fact, act upon it, and there are probably those who do not.

22 Now, we have no indication that Mr. Mallik has ever
23 crossed that line. But I have to say, I've had a number of
24 cases where a defendant -- I had one client I represented as
25 private counsel who had abused grandchildren for years, was 80

1 years old when it was finally discovered. So just because no
2 one has ever been convicted, these types of crimes go
3 unreported, undetected, hidden, and many times, because victims
4 do not come forward. The shame of the victim prevents the
5 victim from coming forward.

6 But at this time, it's correct to say there's no
7 indication that Mr. Mallik has ever engaged in that kind of
8 behavior. Is someone who views child pornography more likely
9 to engage in that behavior than someone who does not? I would
10 think probably so, simply because by viewing it, the individual
11 demonstrates that he's interested.

12 So I don't know that there's ever any surefire way
13 that any evaluator, any, whether it's Dr. Holt or anyone else,
14 no one can ever predict with absolute certainty whether someone
15 will offend or reoffend. So to a degree, the Court is kind of
16 guessing.

17 Now, Mr. Mallik has a clean record. Not only has he
18 not engaged in any type of sexual misconduct that's resulted in
19 a criminal charge, neither has he any other kind of criminal
20 conviction.

21 I respect the fact that Mr. Mallik came to this
22 country, worked hard, got an education, and apparently, was a
23 highly-regarded employee. And he's right, he's lost a lot as a
24 result of this.

25 I'm going to -- well, let me say one other thing.

1 There's been a suggestion as to home detention, and I note the
2 home detention provider, I believe it's ASAP.

3 MS. CHOI: Yes, Your Honor.

4 THE COURT: Just in the interest of full disclosure,
5 my son works there. So I always tell people when they come in
6 with a request to have ASAP provide home detention services, I
7 always think it's wise to let everyone know.

8 Mr. Mallik is somebody who I'm going to take a chance
9 on in this case with some pretty stringent requirements.

10 Now, one point that Ms. King makes -- and it is
11 similar to a drug addiction -- people usually don't get help
12 until they acknowledge that they have a problem.

13 Now, I know Mr. Mallik has steadfastly denied that he
14 committed these offenses; however, I don't believe that, as a
15 result of the trial that took place -- the jury, as I recall,
16 was not out very long -- and there are times when juries render
17 verdicts and I don't necessarily agree with the verdict, but I
18 agreed with the verdict in this case, because all Mr. Mallik
19 really offered was some speculation as to how he may have been
20 set up by someone, and there really was no evidence of that,
21 not credible evidence.

22 SENTENCING

23 The judgment and sentence of this Court: defendant
24 be committed to the Division of Correction, be confined under
25 the jurisdiction of the Commissioner of Correction, for a

1 period of 10 years. I'll suspend that.

2 Place defendant on five years' supervised probation
3 on general conditions.

4 Special condition that defendant register as a sex
5 offender; that defendant participate in sex offender treatment.

6 Defendant is to have no unsupervised contact with
7 minor children.

8 Defendant will be supervised by the unit of the
9 Division of Parole and Probation who specializes in supervising
10 sex offenders.

11 Upon request, he'll submit to a polygraph.

12 He will not possess or view any pornography of any
13 kind.

14 The defendant will remain totally abstinent from
15 alcohol and all illicit substances, and be tested to confirm
16 abstinence.

17 I will waive supervision fees.

18 I'll assess court costs.

19 Ms. King, do you think I've overlooked anything?

20 MS. KING: Your Honor, only the two conditions PSI
21 was requesting was the electronic tracking and curfew
22 geographic restrictions, and that --

23 THE COURT: So ordered.

24 MS. KING: And then I believe you already stated the
25 no unsupervised contact with -- you already stated the no

1 unsupervised contact with minors?

2 THE COURT: Yes. Yes.

3 MS. KING: Thank you, Your Honor.

4 MS. CHOI: Your Honor?

5 THE COURT: Yes?

6 MS. CHOI: With regard to the geographic restriction,
7 does that mean that he cannot go out of state, or is that
8 something that Parole and Probation would have to decide on a
9 case-by-case situation with regard to some of his religious --

10 THE COURT: Well, I'm not specifically saying that
11 defendant, although that is a standard condition that you not
12 leave the state without permission, but yes, I think Parole and
13 Probation can deal with that upon a -- if they have any doubts,
14 they can ask the Court.

15 MS. CHOI: Thank you, Your Honor.

16 THE COURT: All right. Mr. Mallik, you have 30 days
17 within which to file an appeal. You have 90 days within which
18 to ask this Court to modify your sentence. You may be entitled
19 to a review by a three-judge panel. If you exercise that
20 right, before doing that, I would consult with counsel, because
21 a three-judge panel could reduce the sentence, leave the
22 sentence the same, but it could also increase the sentence.

23 All of these rights have to be exercised in writing
24 with the Clerk of this Court.

25 THE CLERK: I have a question. As to which counts?

1 I know you're giving 10 years to Count 1.

2 THE COURT: Oh, I'm sorry.

3 THE CLERK: That's okay.

4 THE COURT: All 11 counts are the same, is that
5 right?

6 MS. KING: Yes, Your Honor.

7 THE CLERK: Yes.

8 THE COURT: All right. What I'm going to do is
9 impose the same sentence on each count, 2, 3, 4, 5, 6, 7, 8, 9,
10 10, and 11, all sentences to run concurrently.

11 Mr. Mallik, I wish you the best of luck.

12 THE DEFENDANT: Thank you, sir.

13 THE COURT: And hopefully, you can begin to put your
14 life back together. I would urge you, however, to strictly
15 comply with all conditions of probation.

16 THE DEFENDANT: I will. Thank you, Judge.

17 THE COURT: Madam Clerk, here's the file.

18 THE CLERK: Thank you.

19 THE COURT: You want me to sign this?

20 THE CLERK: Yes. Filling in on each count.

21 MS. CHOI: Thank you, Your Honor.

22 THE COURT: Oh, credit defendant with five days' time
23 served.

24 MS. KING: Your Honor --

25 MS. CHOI: Thank you, Your Honor.

1 MS. KING: -- just a question about since, you said
2 10, you imposed 10 years, suspend them on each count, but each
3 count only carries five years.

4 THE COURT: Five years. Okay. So --

5 MS. KING: So you would need to do --

6 THE COURT: -- why don't we say -- let's do it this
7 way -- five years on Count 1; five years on Count 2,
8 consecutive; suspend on Count 1 all but five days' time served;
9 suspend the sentence on Count 2; and with regard to Counts 3
10 through 11, simply enter the conviction.

11 THE CLERK: Okay.

12 THE COURT: All right. This Court stands in recess.

13 MS. KING: Thank you, Your Honor.

14 MS. CHOI: Thank you, Your Honor.

15 THE BAILIFF: All rise.

16 (The proceedings were concluded.)
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√ Digitally signed by Kimberly L. Chwirut

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Frederick County in the matter of:

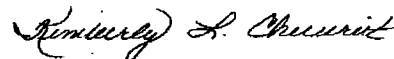
Criminal No. 10-K-16-059271

STATE OF MARYLAND

v.

ABE MALLIK

By:



KIMBERLY L. CHWIRUT
Transcriber

STATE OF MARYLAND

v.

ABE-ARJUN MALLIK

Defendant

In the Circuit Court for

Frederick County Maryland

Criminal No. **10-K-16-059271**

LINE FILING OFFICIAL COURT TRANSCRIPTS

Pursuant to Md. Rule 8-411

Please file the attached official transcripts dated 5/30/17, 5/31/17, 6/1/17, 6/2/17, and 10/3/17 in the foregoing matter.

Jean M. Dower

Jean M. Dower

Official Transcriber

Circuit Court for Frederick County
Maryland

100 West Patrick Street

Frederick, Maryland 21701

301-600-1919

DATE: December 20, 2017

Total Costs of Transcript(s): \$3,472.50

AV

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

STATE OF MARYLAND

*

Criminal No. 16-059271

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vs.

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*

ABE-ARJUN MALLIK,

*

*

Defendant.

*

**DEFENDANT'S MOTION FOR A NEW TRIAL
PURSUANT TO MD. R. 4-331**

COMES NOW, Defendant, ABE-ARJUN MALLIK, by and through his attorneys, SUN E. CHOI, ESQUIRE and DC METRO LAW, LLC, and hereby files this Motion for a New Trial pursuant to Maryland Rule 4-331(b)(1), and represents to this Honorable Court as follows:

1. Pursuant to Maryland Rule 4-331(b)(1)(B), this Honorable Court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial, on motion filed within 90 days after its imposition of sentence. Thereafter, the Court has revisory power and control over the judgment in case of fraud, mistake, or irregularity. Md. R. 4-331(b)(1).

2. That a jury trial was held on this matter from May 30, 2017 to June 2, 2017.

3. That the jury found the defendant guilty of eleven (11) counts, and sentencing proceeded on October 3, 2017 before the Honorable Michael Galloway.

4. That the jury's verdict is unjust and/or improper because it is based on inaccurate and misleading information provided by the State, as well as irregularity caused by a jury pool taint. As such, the defendant should be granted a new trial.

Background Case Information

5. That the State filed its criminal information on December 12, 2016, charging the defendant with eleven (11) counts in violation of CR 11-208, which involves knowingly possessing an image of child pornography. *See* Crim. Info., Case No. 10-K-16-059271, DC Case No. 2U00088412.

6. That the first time the defendant was made aware of the nature of the allegations was April 21, 2016, when a search and seizure warrant was executed at his residence. *See* Appl. for Statement of Charges, DC Case No. 2U00088412.

7. That nearly seven (7) months after the raid of the defendant's home on April 21, 2016, a newly assigned Detective Jayson Snyder filed an application for a statement of charges on November 2, 2016, seeking eleven (11) counts against the defendant in alleged violation of CR 11-208. *Id.*

8. That in the application for the statement of charges, the dates that the alleged offenses occurred was and has always been March 3, 2016. *Id.*

9. That on or about May 17, 2017, just 12 days prior to the jury trial of this matter, the State filed a Motion to Amend the Criminal Information concerning Counts 9, 10, and 11, requesting a change of date of the offenses from March 3, 2016 in all three (3) counts to:

- a) Count 9: April 14, 2016;
- b) Count 10: April 12, 2016; and
- c) Count 11: March 30, 2016.

See State's Motion to Amend Criminal Information ¶¶ 1-3.

10. That the allegations concerned in Counts 9, 10, and 11 involve images of child pornography that the defendant is accused of having ***knowingly possessed*** and were originally

established as having been located in the defendant's ACER PC laptop on or about March 3, 2016. *See* Crim. Info.

**State's Amendment of Date of Offenses -
Not Clerical Error, But Fraud and/or Irregularity**

11. That at the beginning of the jury trial on May 30, 2017, during the presentation of pretrial motions, the State ("Ms. King") presented its argument for amending the date of the alleged offenses, and the defense ("Ms. Choi") presented its opposing argument. *See* May 30, 2017 Trial Transcript ¶¶ 5-19, attached hereto as Exhibit A. The following exchange took place between the State and the Court concerning the State's alleged clerical error regarding the date of the alleged offenses involved:

- a) THE COURT: Let me ask Ms. King a question. When did the State discover the discrepancy in the date?
- b) MS. KING: As soon as we filed the motion, Your Honor.
- c) THE COURT: No, no, you discovered it --
- d) MS. KING: On the date that I filed that motion was when we discovered it.
- e) THE COURT: And how was it that it was discovered?
- f) MS. KING: I came back from maternity leave and I began reviewing this case, preparing for trial, because the State's postponement was denied. That's how I discovered it, Your Honor. . . .

May 30, 2017 Trial Transcript ¶¶ 16-17.

12. That after the State's and defense's arguments, the presiding judge, Judge Galloway, ruled to reserve on the issue of the defense's opposition motion to the State's motion to amend the dates for counts 9-11. Specifically:

- a) MS. CHOI: Because Your Honor stated that it was just based on proffer. So after evidence has been provided maybe to the detectives that are involved in the case, and when they would have found the date, I think that that would change the character --

- b) THE COURT: Well, I will reserve on your request to renew the motion. Make your motion when you think it's appropriate and I'll rule on it at that time.

May 30, 2017 Trial Transcript ¶¶ 18-19.

13. That on May 31, 2017 at trial, the following exchange took place during the defense's cross examination of the State's witness Detective Snyder concerning the alleged clerical error:

- a) MS. CHOI: And when the State filed its criminal information, outlining the 11 counts, on December 2nd, 2016, you didn't notify her that the dates were incorrect, correct?
- b) DET. SNYDER: Ma'am, I didn't pick up on that date.
- c) MS. CHOI: Okay. And at what point did you pick up on that date that that date was wrong?
- d) DET. SNYDER: I can't tell you -- I can't give you a definitive time. I mean, that was clearly my fault, and I can't tell you when I picked up on that, but --
- e) MS. CHOI: Was it months ago, weeks ago, days ago?
- f) DET. SNYDER: No, it very well could have been a month ago.
- g) MS. CHOI: A month ago?
- h) DET. SNYDER: Very well could have been, ma'am. I, I can't give you a specific time frame of when I became aware of it, but nevertheless --
- i) MS. CHOI: Okay. So as soon as you became aware of the fact that the three counts 9, 10, and 11, the date of the offense cannot possibly be March 3rd, 2016, when did you find out and when did you tell Ms. King?
- j) DET. SNYDER: Ma'am, I don't recall.
- k) MS. CHOI: Your Honor, if I may approach?

...

(Bench conference follows:)

- l) MS. CHOI: Your Honor, as you know, when we did the pretrial motions and we did the motion to amend, Ms. King did proffer that after *she* came back from

maternity leave, that *she* identified that the dates were incorrect and that it was a clerical error, that in her good-faith effort, she changed that, and I absolutely believe that to be true. However, based on this testimony, what's actually true is that *he* is the one who found out the date, doesn't know when *he* did it, doesn't know when *he* told her but that it had to be fixed.

I believe that having amended the dates unduly violates Mr. Mallik's right to notice. It is unfair surprise, and I would renew my objection with regard to that and ask that Your Honor reconsider that decision based on the testimony provided by this officer. *He* has no idea when he did any of this stuff.

m) THE COURT: Did what?

n) MS. CHOI: He has no idea what he did and when he did it and that I don't think that there's good cause in any way or a good-faith effort on his part to correct a clerical mistake that had an incredible bearing on Mr. Mallik's life. I would ask that those three counts be reconsidered and we would just pursue on the other eight.

...

o) MS. CHOI: But I also asked Your Honor to please reserve on the fact, and we did that, that you would reconsider that once you heard some testimony from the witnesses, the State's witnesses, and that's why I'm renewing, because you said you can renew your objection at that time again and we can revisit it. That's what we did yesterday, Your Honor, and that's why I'm doing this.

p) THE COURT: Or the Court could grant a motion for judgment of acquittal --

May 31, 2017 Trial Transcript ¶¶ 113-116 (emphasis added).

14. That based on the cross-examination and testimony of Detective Snyder, it is clear that the defendant's right to notice was violated. The State represented that she discovered the wrong date, and filed a motion immediately thereafter. However, Detective Snyder directly contradicts the State's explanation by testifying *under oath* that he discovered the wrong date and notified the State, but he does not know when he discovered the wrong date nor does he know when he notified the State. The two are inconsistent positions.

15. That this demonstrates clearly that it was not a clerical error, but the State's manipulation of the dates of the alleged offenses in order to wrongfully implicate the defendant of the offenses for counts 9, 10, and 11. Only after it was proven that the defendant's ACER PC laptop was not even purchased by the defendant until March 21, 2016, the State belatedly changed the date of the offenses from March 3, 2016 to dates after the purchase, which is highly material to this action and cannot be considered as a mere procedural correction. As such, the State's amendment of the dates of the charges was not only unfair surprise to the defendant, but based on bad faith resulting in fraud and/or irregularity, which gives the Court revisory power and control over the judgment to set aside the unjust or improper verdict and grant a new trial, pursuant to Md. R. 4-331(b)(1).

**Assignment Judge's Misleading Communication to the Jury Pool -
Jury Taint**

16. That a member of the jury pool for the present case, Ms. Alecia F. Trout, contacted defense counsel about an incident she personally witnessed, and notified her of a possible tainting of the jury pool. Please see attached Exhibit B Affidavit of Alecia Frisby Trout. Ms. Trout related that on May 30, 2017, prior to jury selection, Judge William Niklas, addressed the pool of prospective jurors, and communicated that a three-day trial had been set in his courtroom but that the case was not going forward because the defendant had not appeared and that Frederick County officials were going to have to retrieve the defendant. Thereafter, when the prospective jurors were called up for the present case, and were advised that it would be a three-day trial, the jury pool was undeniably tainted. According to Ms. Trout, most jurors

believed that Judge Niklas had been referring to the present case, and that Defendant Abe-Arjun Mallik fled and had to be captured to be brought to trial.

Ms. Trout's affidavit is direct evidence of the jury taint as she was a part of the jury in this matter and her information as to the jury's views is direct and was witnessed by her. Since her testimony that a majority of the jury believed that Mr. Mallik was the defendant who did not appear in court and had to be retrieved by the court officers is *direct* evidence (not hearsay) as to the jury's statements and discussion, her testimony is dispositive on the question of jury taint arising from this incident.

17. That no statement to the jury pool should have been made regarding a defendant allegedly not appearing for trial, but because a statement was made, and based on the attached affidavit, the jury pool was tainted with the incorrect assumption that the defendant of the present case fled from trial and had to be captured to be forced to appear in court. The impression of flight caused by the communication to the jury pool-an incorrect inference as to the defendant, Mr. Mallik-will have caused the jury to be prejudiced and biased against the defendant even before he was able to present his case, likely forming premature conclusions as to the defendant's guilt; such taint cannot be cured, particularly in light of the stigmatizing effect of the charge.

Such communication absolutely prejudiced the defendant. It has long been recognized that evidence of flight may not be indicative of guilt, and that appropriate instructions must be given to the jury to counter such inference. *See, e.g., Thompson v. State*, 393 Md. 291, 303, 901 A.2d 208, 214-15 (2006) (stating that "a defendant's flight may be motivated by reasons unconnected to the offense at issue in the case and that the determination as to the motivation for

flight is properly entrusted to the jury”). In *Thompson*, the Court instructed the jury that evidence of flight “may be fully consistent with innocence If you decide there’s evidence of flight, you must then decide whether this flight shows a consciousness of guilt.” *Id.*

Here, however, no opportunity for such curative instruction existed since neither the trial judge nor defense counsel knew of the communication to the jury pool, which left the jury with an incorrect inference of flight regarding the defendant, and learned of it only after the trial. Unlike *Thompson*, the defendant did not have the opportunity to cure or counter the inference through instruction, since no instruction could have been given. Thus, the inference of flight inadvertently created by the assignment judge’s statement to the jury pool was left unaddressed and unrebutted and was unknown to defense counsel. The jury was effectively left with an incorrect assertion of flight conveyed by the assignment judge without the ability of defense counsel to either rebut such inference or ask for a curative instruction. In such case, prejudice is absolute.

18. Although there is no case law in our jurisdiction that addresses this specific issue of taint arising from an improper or misleading communication made to a jury pool outside of counsel’s knowledge, there is case law that concern instances of improper contact between jurors and witnesses, defendants, or the State, or improper reliance by juries on dictionary definitions during jury deliberation. See *Dillard v. State*, 415 Md. 445, 3 A.3d 403 (2010); *Jenkins v. State*, 825 A.2d 1008, 375 Md. 284 (2003); *Allen v. State*, 89 Md.App. 25, 597 A.2d 489 (1990); *Wemsing v. General Motors Corp.*, 298 Md. 406, 470 A.2d 802 (1984). If the principles relied upon in the decisions of these cases were to be extrapolated and applied to the present case,

which involves far more prejudicial circumstances, it is clear that the taint of this jury pool is one that would require a new trial.

19. While a judge's contact with the jury pool is not improper by its very nature, as compared to a defendant's contact with a member of the jury pool, Judge Niklas' communication to the jury pool transmitted information that caused a very high probability of prejudice against the defendant, which is affirmatively shown in the record by Ms. Trout's affidavit or otherwise should be presumed.¹

Moreover, since a failure to appear in court has been recognized as being probative of consciousness of guilt, *Decker v. State*, 408 Md. 631, 640-41 (2009), Mr. Mallik was plainly prejudiced where 1) he was *not* the defendant who failed to appear and 2) the inference that he did not appear would be probative, as the Court in *Decker* recognized. The effect of such taint is magnified where determination of guilt revolved largely around the defendant's credibility in his assertion that he did not import the photographs but that they were the result of an intrusion into his devices by some other party; thus, the inference of flight aroused by Judge Niklas' communication to the jury pool is compelling and not merely harmless error.

¹ In *Allen v. State*, the Court of Special Appeals addresses the test for determining whether jury contact is prejudicial:

It is well established in Maryland that in determining whether jury contact is prejudicial, a trial court must balance the "probability of prejudice from the face of the extraneous matter in relation to the circumstances of the particular case." Where the record affirmatively shows prejudice by improper communications, the error requires reversal; but where the record affirmatively shows no prejudice, reversal is not required. If the record does not show whether the error prejudiced the defendant, prejudice is presumed, and the burden falls on the state to rebut the presumption of harm. The decision as to whether the State has met this burden is committed to the trial court's discretion and, like other motions for mistrial or new trial, will be reversed only upon a finding of abuse of that discretion.

Allen, 89 Md.App. at 46-47 (1990) (citations omitted).

Finally, “[t]here must be an evidentiary basis, either direct or circumstantial,” to link the defendant’s conduct to the consciousness of guilt inference,” *Decker* at 641 (quoting *Thomas v. State*, 372 Md. 342, 355, 812 A.2d 1050, 1057 (2002)). In the present case, there can be **no** such “evidentiary basis” since Mr. Mallik was **not** the defendant who failed to appear. Nevertheless, the jury was left with the false impression that Mr. Mallik was guilty of flight, as Ms. Trout has made clear in her affidavit.

20. The resulting jury taint in this case inevitably violated the defendant’s rights to an impartial jury under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights.² The incurable taint of the jury pool prevented the jury from being impartial, prevented the defendant from proposing a curative instruction on flight, as in *Thompson*, and prevented defense counsel from attempting to rebut any such inference.

Jury prejudice here is a “demonstrable reality,” not mere speculation. *Cf. Baldwin v. State*, 5 Md. App. 22, 28 (Ct. Spec. App. 1968). The statement of a defendant’s non-appearance was **actually** made by the assignment judge to the jury pool; at least one juror—Ms. Trout—testified that she and most other jurors believed that it referred to Mr. Mallik; and no opportunity existed

² The Court of Appeals discussed the right to an impartial jury in *Dillard v. State*:

The Sixth Amendment to the United States Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, *by an impartial jury* of the State and district wherein the crime shall have been committed....” (Emphasis added.) Article 21 of the Maryland Declaration of Rights also guarantees “[t]hat in all criminal prosecutions, every man hath a right ... to a speedy trial *by an impartial jury*, without whose unanimous consent he ought not to be found guilty.” (Emphasis added.) “A criminal defendant’s right to have an impartial jury trial is one of the most fundamental rights under both the United States Constitution and the Maryland Declaration of Rights. Inherent in both documents are the paramount notions of justice and fair process during criminal proceedings.” *Jenkins v. State*, 375 Md. 284, 299, 825 A.2d 1008, 1017 (2003). “The potency of the Sixth Amendment right to a fair trial relies on the promise that a defendant’s fate will be determined by an impartial fact finder who depends solely on the evidence and argument introduced in open court.” *Wright v. State*, 131 Md.App. 243, 253, 748 A.2d 1050, 1055 (2000) (quoting *Allen v. State*, 89 Md.App. at 42, 597 A.2d 489). *Dillard*, 415 Md. at 454-55, 3 A.3d at 408 (2010).

to cure such taint since neither the trial court nor counsel knew of Judge Niklas' communication. That the inference was wrong and factually unsupportable renders it ever more prejudicial.

Therefore, the defendant should be granted a new trial.

**State's Reference to Emails with "Juvenile" Females -
Incomplete Investigation**

21. That on May 31, 2017 at trial, the following exchange took place during the State's direct examination of Detective Snyder concerning emails allegedly soliciting prostitution:

- a. [MS. KING]: And, Detective Snyder, you stated that there was a second set of e-mails, and what were those?
- b. [DET. SNYDER]: So what I was referring to earlier is there were some *one-way* conversations between two *juvenile* females.
- c. [MS. KING]: And how did, you were -- how were you able to identify that they were juvenile females?
- d. [DET. SNYDER]: One listed their age. In addition, both of them contained images of the females that were sending these correspondence.
...
- e. [MS. KING]: And, Detective Snyder, explain to the jury why that's relevant or to your investigation.
- f. [DET. SNYDER]: *It was relevant to me because it shows a pattern or an interest in particularly young females.*

May 31, 2017 Trial Transcript ¶ 40 (emphasis added).

22. That on May 30, 2017, during the presentation of pretrial motions, the following exchange took place concerning the alleged juvenile females:

- a. MS. CHOI: Your Honor, I will proffer something that maybe the State doesn't know. I did contact these individuals.
- b. THE COURT: I'm sorry, you contacted --
- c. MS. CHOI: I did contact these individuals from his e-mail accounts. And I spoke to them. They were actually very nice. They're adults. And they spoke to him --

they had no idea who he was. No idea who he was, his name, his call name, his alias, none of it. And I actually have phone numbers. I'm going to cross-examine Detective Snyder on whether or not he followed up with these individuals. It was so easy for me to find them. . . .

May 30, 2017 Trial Transcript ¶ 40.

23. That when defense counsel contacted these two alleged "juvenile" females, they were in fact adult women who had no idea who the defendant was and confirmed that no law enforcement personnel had ever contacted them regarding this case. Detective Snyder relied on an email message and images to misclassify these two adult women as juvenile, while confirming that these emails only contained inbound messages received in the defendant's email account, no outbound messages from the defendant's email account. Thus, Detective Snyder testified in court to his mistaken classification and assumption of a critical fact without conducting an investigation.

**State's Reference to iPad -
Incomplete Investigation, Speculative Evidence, and Violation of Due Process**

24. That on May 31, 2017, during the defense's cross-examination of the State's expert witness, Mr. Steven Gibson, Mr. Gibson testified to the following, regarding the inability of the State to examine the defendant's iPad:

- a. [MS. CHOI]: So there's a way to get in?
- b. [MR. GIBSON]: There is a way, because Cellebrite is one of the tools that we use. It's for mobile forensics. I use it on pads, tablets, and this other stuff. This month, which they don't have yet, because I consulted with the Cyber Crimes Center, they said with the next rollout, they would be able to do this and crack that on this iPad, but here we are today.
So right now the answer is no because the government -- it's very expensive. As you know, in the one news for the terrorist, Apple did not even want to open that and there was -- they finally got into it, but that was thousands upon thousands of dollars, taxpayer dollars. Obviously, they were -- ***if we had more time, we would have gotten into Mr. Mallik's iPad.***

May 31, 2017 Trial Transcript ¶ 224 (emphasis added).

25. That the Court asked the State's expert witness, Mr. Gibson, if a court order would assist in examining the iPad:

- a. THE COURT: It's my understanding that, for instance, the iPad, that with a court order, you can send that iPad to Apple and they would be able to access the information.
- b. [MR. GIBSON]: That would take months and months, Your Honor.
- c. THE COURT: I'm aware of that.
- d. [MR. GIBSON]: But there is -- and then also the cost incurred on the taxpayers. So that was why, if we could wait until next month -- Homeland Security has a contract with Cellebrite for advanced techniques and stuff, but that was not coming out until past this court date. So we were kind of stuck. . . .

May 31, 2017 Trial Transcript ¶¶ 232-233.

26. That the State had the opportunity to send the iPad device to Apple or wait a mere month to obtain access to the contents of the device, but instead chose to prosecute an innocent man based on incomplete evidence. Despite having several avenues to examine the device, with even the defendant volunteering his assistance in the process, the State did not bother with pursuing such examination and instead took advantage of the iPad's existence by insinuating that the device contained child porn images. There were nearly one hundred mentions of the iPad during trial, but not once did the State ever prove that porn images actually existed on the iPad. Specifically, the State alluded to the iPad 69 times on the first day of trial and 29 times on the second day. *See* May 30, 2017 Trial Transcript; May 31, 2017 Trial Transcript.

Without completing the investigation of the iPad, the State should not have been allowed to offer such speculative evidence and should never have mentioned the iPad in open court. Defense counsel objected to the admittance of the physical iPad device into evidence which the

State acknowledged had not been reviewed, but the Court overruled the objection and allowed the device to be published to the jury. *See* May 31, 2017 Trial Transcript ¶¶ 49-50.

27. That the State's mention of the iPad in this manner confused the Court and the members of the jury, who had wanted to examine the contents of the device. At the conclusion of the trial, one of the jurors informed defense counsel that the jurors were very concerned about the iPad and that it was one of their primary considerations in convicting the defendant. Please see attached Exhibit C - Affidavit of Sun E. Choi. The State's numerous references to the unreviewed iPad invited speculation by the jury that the illegal images were contained in the device but that the defendant had concealed his possession of those images by hiding the device and/or pretending to be unable to recall the password. Such speculative evidence enhances the jury to disbelieve the defendant, particularly given the stigmatizing effect of the charge.

28. That it is evident that the State conducted an incomplete investigation and violated the defendant's due process rights by offering speculative evidence in the form of an iPad that the State could have examined if it waited a month but instead referenced in alluding to the defendant's deceit and guilt, which caused confusion to the jury and prejudice against the defendant. These repeated references to the stigmatizing inference that child pornography must lie inside the device if it could only be opened, communicated to the jury nearly a hundred times, are vastly different from a single instance of an unsupported suggestion that would not, in itself, provide a basis for a new trial. *Cf. Hull v. State*, 2016 Md. App. LEXIS 990 (Ct. Spec. App. 2016) (holding that a single reference to "sexual solicitation" was not a basis for mistrial).

29. That the State not only failed to complete its investigation, but it provided inaccurate and misleading information, as well as unexamined speculative evidence, to the

members of the jury, which caused prejudice to the defendant and denied his rights to due process and to an impartial jury, and therefore the jury's guilty verdict should be vacated in favor of a new trial.

WHEREFORE, Abe - Arjun Mallik, the Defendant, prays that this Honorable Court:

- A. Grant Defendant's Motion for a New Trial; and
- B. For other such relief as this cause may require.

Request for Hearing

Defendant requests a hearing on this issue.

Respectfully submitted,

DC Metro Law, LLC

By: _____



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Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2017, a copy of the Motion for Modification of Sentence and Proposed Order was served via electronic mail to:

Office of the State's Attorney
Circuit Court Division
Frederick, Maryland 21701
Fredericksaocircuit@frederickcountymd.gov



Sun E. Choi, Esq.

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

STATE OF MARYLAND

*

Criminal No. 16-059271

*

vs.

*

*

ABE MALLIK,

*

*

Defendant.

*

ORDER

UPON CONSIDERATION of the foregoing Defendant's Motion for a New Trial, and any response hereto, it is this _____ day of _____, 2018, by the Circuit Court for Frederick County, Maryland,

ORDERED, that Defendant's Motion for a New Trial shall be Granted; and it is further hereby,

ORDERED, that the jury's verdict shall be set aside and the matter shall be heard in a new trial.

SO ORDERED.

JUDGE of the Circuit Court of Maryland
For Frederick County

AV

1 THE COURT: Yes, I'm not seeing it. It may be in
2 here, but -- thank you.

3 MS. CHOI: Your Honor, for Your Honor's convenience,
4 I actually have the opposition -- so should I --

5 THE COURT: I'm sorry?

6 MS. CHOI: I have the opposition motion as well, so
7 you might want to have that as well?

8 THE COURT: Okay.

9 MS. CHOI: If I may approach? And just for the
10 record, I'll do this in open court that the defendant is
11 offering its defense opposition to the State's motion to
12 exclude defense expert.

13 MS. KING: Your Honor, as to the motion to amend, I
14 believe that pursuant to Rule 4-204, the Court can at any time
15 before a verdict permit an amendment to the charging document
16 if the amendment does not change the character of the offense,
17 and that is I believe the case law is well established that a
18 change to date is as to form and not substance. Changing the
19 date does not change the character of the offense. In Manuel
20 v. State, if the same crime is charged after the amendment,
21 it's established that that does not change the character of the
22 offense. In this case, Your Honor, the State is amending the
23 three counts, Count 9 to April 14th, Count 10 to April 12th and
24 Count 11 as to March 30th. They were -- it was a clerical
25 error that it stated March 3rd. We believe that that change is

1 absolutely to form and not substance. The purpose of the
2 criminal information, Your Honor, is to provide notice of the
3 accused as to the nature of the crime and that is absolutely
4 what has been done in this case. There has been adequate
5 notice to the defendant that he's been charged with possession
6 of child pornography. That has not changed after this
7 amendment.

8 Furthermore, I did read and I will have an
9 opportunity to respond after counsel states her opposition, but
10 in anticipation of that, the defense has not changed. The
11 defendant stated his defense from before the charging document
12 even went out, which was that he was hacked. This does not
13 unduly prejudice or there's no unfair surprise. His defense is
14 still that he was hacked. Therefore, Your Honor, the State
15 does believe that both the rule and the case law is clear here
16 in Maryland that a change to date is form. The cases that the
17 State cites in those cases, dates were changed in theft
18 schemes, dates were changed in abuse of minors -- sex abuse of
19 minors. So felony charges, the dates were permitted to be
20 changed even during trial, let alone when the State did request
21 this prior to trial.

22 THE COURT: Madam State, in Count 9, what was the
23 dates --

24 MS. KING: They were all March 3, Your Honor, March
25 3, 2016.

1 THE COURT: March 30th?

2 MS. KING: 3rd. They were all March 3rd.

3 THE COURT: 3rd?

4 MS. KING: Yes.

5 THE COURT: Okay. All right. And the correct date
6 for 9 is April 14th, for Count 10, it's April 12th, and for
7 Count 11, March 30th?

8 MS. KING: Yes, Your Honor.

9 THE COURT: All right, Ms. Choi?

10 MS. CHOI: Thank you, Your Honor. Your Honor, the
11 defense adamantly opposes the amendment that the State is
12 requesting. Pursuant to Maryland Rule 4-204 governing the
13 amendment of charging documents, it is absolutely clear that
14 that is to prevent unfair surprises to defendant and counsel.
15 And if the State's proposed amendment is actually changed, it
16 will substantively change not only the defense theory, but
17 essentially every single thing that happened after that fact.
18 The defendant does not consent in any way. It has been
19 prejudicial to even have the amendment be filed because as of
20 May 17, 2017, the defense was ready. The strategy had already
21 been provided to the State since May of 2016 when Mr. Mallik
22 gave a voluntary interview without charges being formally
23 brought to him.

24 So from day one, he has maintained his innocence.
25 With the amendment of these dates, Your Honor, it actually

1 provides the State a very nice fit. Because on March 3rd, Your
2 Honor, of 2016, the three counts that involve the alleged child
3 porn images were found on Mr. Mallik's Acer personal laptop.
4 He didn't own the Acer laptop until March 21st. That was the
5 receipt that was seized from the search and seizure that the
6 law enforcement took. They had that information since April
7 21, 2016 that Mr. Mallik did not own that computer where those
8 images were allegedly located.

9 Now, the charges are 11 counts. Eleven counts of
10 knowingly possess -- not just possession. We're not talking
11 about a drug case. We're talking about knowingly possess.
12 Because of that language, it absolutely changes the substance
13 of the nature of the events. The defense trajectory has to go
14 a completely opposite direction. Now, that Acer laptop is
15 available to Mr. Mallik's 14 year old daughter. She has access
16 to it. And pursuant to some of the police report, it appears
17 that some of the images may have been from a Google account, a
18 storage in the cloud. Mr. Mallik doesn't have that. So had we
19 known that the specific dates of April 14, April 12, and March
20 30 would be used, then we would have had a different way to go,
21 to figure out what the answers were.

22 But because we knew Mr. Mallik did not have that PC
23 where the alleged child porn was found on that date, March 3rd,
24 and in fact during the voluntary interview, I asked Detective
25 Elrod, who was the lead detective in this case, has the dates

1 of the events changed in any way? And I quoted that in our
2 opposition. He said no, those are the dates that are involved.
3 Nothing else. That has not ever changed, Your Honor, until May
4 17, 2017.

5 So Your Honor, my opposition to this is not only does
6 it add 15 more years to Mr. Mallik's possible incarceration
7 time, because if the dates are actually granted, the changes,
8 it would allow the jury to possibly find that Mr. Mallik owned
9 the Acer laptop at that time, potentially may have had child
10 porn images, and may have knowingly possessed that. But on its
11 face now, Your Honor, on March 3, on those three counts, he
12 didn't own the PC where the images were found. And out of the
13 27 devices, storage thumb drives, every single thing that was
14 tested, this was the one computer that had the images of Counts
15 9, 10 and 11. All of the other counts were pursuant to an e-
16 mail attachment.

17 The State can absolutely pursue that. That's not
18 what we're fighting about. We're fighting about the fact that
19 if that date had been corrected way in advance, it would have
20 absolutely allowed Mr. Mallik to figure out the defense and
21 figure out the questions and answer those questions. But now,
22 at the eve of trial, granting that is going to really change
23 not just the character, but the substance that the defense
24 strategy involved. And that's, Your Honor, absolutely
25 prejudicial to this man, who has never been charged, who has

1 never been convicted of any crimes.

2 And as a result of that, Your Honor, he can't
3 consent. Pursuant to the rule, there is also case law that
4 says if there are critical errors, if it adds additional
5 potential jail time, then it does change the nature of the case
6 and the character of a case. And as a result, Your Honor, we
7 do not agree that this is an amendment that should be granted.
8 Mr. Mallik has maintained his innocence from day one. He has
9 provided ample information that his router was defective, that
10 he had a whistle-blowing incident back in 2014 for which he had
11 a lot of problems. Fast forward into 2016 when all of this
12 happened. He filed a formal complaint against a supervisor,
13 and the day after, his internet connection was incredibly slow.
14 He called Comcast and we actually received exculpatory evidence
15 from Comcast supporting Mr. Mallik's position that in fact he
16 did call before these images were ever uploaded, that there
17 were some internet connection problems and connectivity issues.
18 And so Comcast worked with him and actually sent him to
19 technical support, and it just turned out that this defective
20 router completely crashed at some point.

21 And the reason why that is significant, Your Honor,
22 is that's pursuant to a defense. Mr. Mallik never, ever
23 possessed child porn, let alone knowingly, and we have
24 legitimate defense in terms of ample evidence not only from the
25 State's documents that they provided to us, but from Mr. Mallik

1 himself who is going to testify. And essentially, Your Honor,
2 there's no way that if these dates will be granted, it means
3 that it fits very nicely into the date after the Acer was
4 purchased. Part of our defense was that Mr. Mallik cleaned up
5 the malware where he saw 200 plus unwanted programs on this
6 brand new Acer laptop for some reason within five days, three
7 or four days of purchase -- he found 200 plus unwanted programs
8 on a brand new Acer, for which they have a receipt. So they
9 know that it's brand new.

10 And all of a sudden, after he wipes that clean with
11 the malware software that he purchased and we turned it over to
12 them, that date was March 26th. They now conveniently want to
13 use the dates March 30, April 12 and April 14. Because by
14 April 21st, the raid occurred and the law enforcement seized
15 that device. So they had a certain window of time, Your Honor,
16 in which those three counts where those alleged images are
17 knowingly possessed by Mr. Mallik has to be after March 21st
18 when he owned it, after March 26th, when he wiped out the
19 malware, to dispute the hacking theory that the defense had
20 already provided it and before April 21st.

21 So those counts, Your Honor, March 30, April 12th,
22 April 14th -- fits very nicely into that little spot where he
23 could potentially be found by a jury and have an additional 15
24 years -- on each count, five years, plus a \$2,500 fine when the
25 State has already got other counts that has nothing to do with

1 the PC and can go forward.

2 So yes, Your Honor, this is not just a simple
3 clerical error. This has completely turned one defense into a
4 trajectory which we didn't consider at all because at that
5 point, he didn't own the PC. And it's that simple. He just
6 didn't own it. And yes, there's reasonable doubt there. So
7 Your Honor, based on the facts of the case, and the fact that
8 Mr. Mallik provided all of this defense strategy before he was
9 even charged, before he even had the benefit of discovery --
10 because there were no formal charges -- we adamantly oppose any
11 amendment to those dates.

12 The State can go forward on the other counts, Your
13 Honor, and we're prepared to go forward on those.

14 MS. KING: If I may reply, Your Honor?

15 THE COURT: Ms. King?

16 MS. KING: And Your Honor, Ms. Choi again states very
17 beautifully the defense theory, which they have been stating
18 since the very beginning, which hasn't changed. And Your
19 Honor, Ms. Choi did not address that the case law is clear
20 that -- and this is a direct quote from Manuel v. State -- if
21 the same crime is charged after the amendment, the offense's
22 character has not been changed. That was in Manuel v. State.
23 In Guyant v. State (phonetic sp.), in Thompson v. State, this
24 is well-established law in Maryland. And even though he may
25 face additional penalties because there are still additional

1 charges, of course, that -- they're not new charges. There's
2 charges that still exist. The penalties haven't changed. And
3 in addition to that, Your Honor, there has been no undue
4 surprise. The defense had reviewed these images, had access to
5 the forensic file since December 13, 2016. That's when the
6 State gave the opportunity to view these CP images. That's
7 when the examination, the preliminary examination had been
8 conducted and completed. And Ms. Choi and I met at the State's
9 Attorney's Office and she had access to this file. There's no
10 undue surprise.

11 And Your Honor, I believe that the State's motion
12 should be granted to amend these counts. And the State is
13 ready to go forward.

14 And alternatively, Your Honor, if these counts are
15 dismissed, the State can dismiss all counts and recharge. And
16 we'd be back here. The state is ready to go forward today.
17 We're trying to give the defendant a speedy trial. And we're
18 ready to go forward.

19 MS. CHOI: Your Honor, at that point, then we would
20 prefer that the State dismiss the entire charge. Because then
21 it would give us a little bit more time. With regard to the
22 viewing and the accessibility of the files, Your Honor, that
23 was -- yes, I met with Ms. King back in December. And I was
24 given snippets of those images and the path files. And that
25 was it, Your Honor. I didn't get a copy of it.

1 MS. KING: We can't provide copies.

2 MS. CHOI: And I wouldn't want those copies anyway --
3 and so Your Honor, so knowing what I knew back then, when he
4 was actually charged November 2nd, and then I met with Ms.
5 King, because I was doing my due diligence, doing whatever I
6 can to try to prove Mr. Mallik's innocence, I went and saw
7 these images and the criminal information wasn't filed until
8 December 2nd.

9 So this all happened very close in time, Your Honor,
10 and I never actually physically had that possession of those
11 images or the path files or where they actually originated
12 from. And so Your Honor, the expert report was not provided
13 until months after that. Months after that. And then on top
14 of that, the expert's report then was updated May 18, 2017.
15 Weeks ago. So throughout this entire time, from the start of
16 the case up until now, there has been continuous delays. I'm
17 not saying that it's Ms. King's part. The police report is
18 telling me exactly who got delayed. It was the retirement of
19 the lead detective. Then it was picked up by Detective Snyder.
20 Months when by when nothing happened. The very first time that
21 Mr. Mallik knew sort of what was going on was during the raid
22 on April 21st. It wasn't until November 2nd because I prompted
23 the detective into finding out what is the conclusion of the
24 investigation? He has voluntarily provided everything that you
25 wanted. He even gave you the defective router, which Detective

1 Elrod refused to take. I mean, that was a dead router. He has
2 receipts of a new router. This is the defense. This is what's
3 going on. There is somebody in his employment who is out to
4 grind his ax and he wants his pound of flesh. And he knows
5 exactly where Mr. Mallik works. He telecommutes from home as
6 well as go into FTF.

7 So everything about him is known to his employer who
8 is grinding his ax because back in 2014, he won \$51,000 because
9 there was racial discrimination. And since that time, it's
10 never been the same, Your Honor. He is a whistleblower. We
11 might not like him for doing that, but he had the right to do
12 it. And because of that, he has been prejudiced and has been a
13 victim at his employment. Now, there's a motive there. Not
14 only is there a motive there, there's an opportunity because
15 everything that he did -- and our expert will testify to
16 that -- who is here free of charge, he's just a neighbor --
17 would say that really indicates somebody who has been hacked.
18 That has been our defense from day one, Your Honor. From day
19 one.

20 And so I absolutely disagree, respectfully, with the
21 State, that it does change everything about this case, Your
22 Honor. It took us to a different trajectory. Had I known that
23 that's what the State was going to use in terms of those three
24 counts, oh, I would have absolutely interviewed every -- I
25 would have gotten his daughter and provided that information --

1 everything voluntarily. Because I wanted the State to know
2 that this is where we were coming from. And none of that
3 investigation actually took place.

4 Mr. Mallik's position was never investigated until
5 late April, maybe early May. They then followed up with
6 Comcast to see if he actually made the service calls back in
7 February. They then followed up with a potential other person
8 who might have a motive against Mr. Mallik. This was all done
9 very -- it was very delayed. It was very last minute. And as
10 a result, there was a request for a continuance. All that
11 happened, Your Honor, that happened in this case.

12 As a result, he has suffered. And if the State wants
13 to nolle pros the entire case, then so be it. And let them
14 recharge. But at least that gives me enough time to
15 investigate that defense. Because at this point, it is unfair
16 surprise. And I want to keep calm and let Your Honor know I
17 can do whatever I can to make this work, but that was the key
18 to the defense, Your Honor. That is a crucial element. And
19 it's not just a clerical mistake or an error. It's his life.
20 It's his liberty at stake. And I need more time for
21 investigation.

22 THE COURT: Let me ask Ms. King a question. When did
23 the State discover the discrepancy in the date?

24 MS. KING: As soon as we filed the motion, Your
25 Honor.

1 THE COURT: No, no, you discovered it --

2 MS. KING: On the date that I filed that motion was
3 when we discovered it.

4 THE COURT: And how was it that it was discovered?

5 MS. KING: I came back from maternity leave and I
6 began reviewing this case, preparing for trial, because the
7 State's postponement was denied. That's how I discovered it,
8 Your Honor. And Your Honor, I mean, the case law is clear
9 that -- Your Honor, I cite four specific cases that
10 specifically say the changing of a date and offense is
11 considered a matter of form and not substance.

12 THE COURT: I'm familiar with all that.

13 MS. KING: Exactly, Your Honor.

14 THE COURT: But I also -- I mean, I think I have an
15 obligation to hear Ms. Choi, and you know, based upon her
16 arguments, I just want to make sure before I rule -- so this
17 change was discovered late in the game as you're saying the
18 State acted in good faith, didn't sit on this after --

19 MS. KING: No, I actually called her before I filed
20 the motion to notify her that I would be filing it.

21 THE COURT: All right, I'm going to grant the State's
22 motion. I believe that it is a clerical error. Ms. Choi, I
23 hear you. A lot of what you say is based upon facts in the
24 form of proffers. And I think it's really difficult for me
25 to -- I started out with the notion that when we're talking

1 about a date that it is probably a clerical matter. And I
2 don't think at this juncture that I'm inclined to deviate from
3 my usual practice, which is in a case like this to grant a
4 motion to amend the charge based upon a discrepancy with the
5 date.

6 Now, if we were talking about, you know, a date that
7 was alleged and there were years in between the dates, that
8 might be something different. But in this particular case, I
9 believe that there's no indication the State is not acting in
10 good faith and I believe it is a matter of form, not substance.
11 So I will grant the State's motion to amend.

12 MS. KING: Thank you, Your Honor.

13 MS. CHOI: Your Honor, would Your Honor reconsider
14 that decision once you have heard some evidence with regard
15 to --

16 THE COURT: You want to renew the motion at some
17 point?

18 MS. CHOI: Right.

19 MS. KING: Your Honor --

20 MS. CHOI: Because Your Honor stated that it was just
21 based on proffer. So after evidence has been provided maybe to
22 the detectives that are involved in the case, and when they
23 would have found the date, I think that that would change the
24 character --

25 THE COURT: Well, I will reserve on your request to

1 renew the motion. Make your motion when you think it's
2 appropriate and I'll rule on it at that time.

3 MS. CHOI: Thank you, Your Honor.

4 MS. KING: Your Honor, the State's second motion --
5 the State filed a motion to exclude the defense expert witness
6 based on failure to set forth the criteria in 5-702. Does Your
7 Honor want a copy of that?

8 THE COURT: Please.

9 MS. KING: And I'll bring up counsel's opposition.

10 MS. CHOI: Thank you.

11 MS. KING: Does Your Honor want a minute to review
12 that?

13 THE COURT: No, you can go ahead.

14 MS. KING: Thank you, Your Honor. Your Honor, it's
15 established in Rule 5-702 that there are three prongs at which
16 an expert testimony should be admitted -- whether the witness
17 is qualified by knowledge, skill experience; number two, the
18 appropriateness of the testimony as well as three, whether
19 there is a sufficient factual basis existing to support that
20 expert testimony.

21 The State filed this motion because based on our
22 review of the expert's opinion, there is no factual basis. The
23 Courts have held that there needs to be -- that expert
24 testimony cannot just be based on conjecture or incompetent
25 evidence. And that's what we believe is here. In the State's

1 defense is that he was hacked. The defense can put that on
2 that this was not him. The State does believe that this is not
3 prejudicial whatsoever.

4 MS. CHOI: Your Honor, I will proffer something that
5 maybe the State doesn't know. I did contact these individuals.

6 THE COURT: I'm sorry, you contacted --

7 MS. CHOI: I did contact these individuals from his
8 e-mail accounts. And I spoke to them. They were actually very
9 nice. They're adults. And they spoke to him -- they had no
10 idea who he was. No idea who he was, his name, his call name,
11 his alias, none of it. And I actually have phone numbers. I'm
12 going to cross-examine Detective Snyder on whether or not he
13 followed up with these individuals. It was so easy for me to
14 find them. And Your Honor, these kinds of e-mails, they do
15 violate 403. When the reasonable person on a jury is going to
16 hear this information and look at this South Asian man, they're
17 going to say, hmm, just maybe he has that propensity. They
18 might confuse the issues involved. And that's what 403 allows
19 us to do, to make sure that the jury isn't confused.

20 MS. KING: And Your Honor, as Ms. Choi just stated,
21 it goes to the weight of the evidence and let the jury decide.
22 She can cross-examine and say that this wasn't him, you know?
23 That this is -- this goes to access and control of that e-mail.

24 THE COURT: Am I correct, we're talking about one
25 specific e-mail?

1 MS. KING: Thank you, Your Honor.

2 BY MS. KING:

3 Q And, Detective Snyder, you stated that there was a
4 second set of e-mails, and what were those?

5 A So what I was referring to earlier is there were some
6 one-way conversations between two juvenile females.

7 Q And how did, you were -- how were you able to
8 identify that they were juvenile females?

9 A One listed their age. In addition, both of them
10 contained images of the females that were sending these
11 correspondence.

12 MS. KING: If I could approach the clerk?

13 THE COURT: (No audible response.)

14 BY MS. KING:

15 Q And, Detective Snyder, explain to the jury why that's
16 relevant or to your investigation.

17 A It was relevant to me because it shows a pattern or
18 an interest in particularly young females.

19 MS. KING: If I may approach counsel?

20 THE COURT: (No audible response.)

21 MS. KING: Your Honor, if I may approach?

22 THE COURT: (No audible response.)

23 BY MS. KING:

24 Q I'm showing you State's Exhibit 13. Can you take a
25 moment to review those e-mails?

1 password-protected, then essentially you're telling us, your
2 testimony, that you, the expert witness that does this for a
3 living, Homeland Security, FBI, and the Baltimore office will
4 just never be able to get into that Apple iPad. Is that what
5 you're saying?

6 A No.

7 Q Okay.

8 A The reason why I say --

9 Q So there's a way to get in?

10 A There is a way, because Cellebrite is one of the
11 tools that we use. It's for mobile forensics. I use it on
12 pads, tablets, and this other stuff. This month, which they
13 don't have yet, because I consulted with the Cyber Crimes
14 Center, they said with the next rollout, they would be able to
15 do this and crack that on this iPad, but here we are today.

16 So right now the answer is no because the
17 government -- it's very expensive. As you know, in the one
18 news for the terrorist, Apple did not even want to open that
19 and there was -- they finally got into it, but that was
20 thousands upon thousands of dollars, taxpayer dollars.
21 Obviously, they were -- if we had more time, we would have
22 gotten into Mr. Mallik's iPad.

23 Q Okay. Okay. And you testified that was unusual for
24 somebody that is a defendant of knowingly possessing child
25 pornography, that they would use a VPN, a virtual private

1 Q And you can --

2 MS. KING: If I may approach Madam Clerk?

3 THE COURT: (No audible response.)

4 THE CLERK: Yeah.

5 BY MS. KING:

6 Q I'm showing you what's been marked as State's Exhibit
7 14. What is that?

8 A This is an Apple iPad.

9 Q And is that the iPad that you were referring to that
10 was not reviewed?

11 A That's correct.

12 Q And is that -- has that been in, placed in the chain
13 of custody?

14 A Yes.

15 MS. KING: State likes to move State's Exhibit 14
16 into evidence.

17 MS. CHOI: Your Honor, for the record, I would
18 object. I don't see the necessity. There's an accurate
19 description of exactly what it is, even the case color, the
20 color of the iPad, and the chain of custody in which the
21 Defense, for the convenience of the State's case, stipulated
22 to. I don't see why a physical piece of device needs to
23 actually be admitted into evidence at this point. So for the
24 record, the Defense would object.

25 THE COURT: I'll overrule. It's admitted.

1 (The item marked for
2 identification as State's
3 Exhibit No. 14 was received
4 in evidence.)

5 MS. KING: Thank you, Your Honor. If I could publish
6 that to the jury?

7 THE COURT: (No audible response.)

8 BY MS. KING:

9 Q Detective Snyder, did there come a time, were you
10 able to review the results of the forensic examination?

11 A That's correct.

12 Q And what, what were you able to find?

13 A So I received the results of the examination on
14 October 25th, 2016. I noticed that there were various images,
15 child pornography-related images as well as images that were
16 non-child pornography-related.

17 Q And where were those images located?

18 A On the defendant's Acer laptop.

19 MS. KING: If I may approach the clerk?

20 THE COURT: (No audible response.)

21 MS. KING: If I may approach the witness?

22 THE COURT: (No audible response.)

23 BY MS. KING:

24 Q I'm showing you State's Exhibit 15. Do you recognize
25 that?

1 Q And according to Steven Gibson's forensic report,
2 that HMA virtual private network software was installed on that
3 Acer laptop on March the 23rd, 2016, correct?

4 A Correct.

5 Q And it is your understanding that the HMA VPN
6 software can then connect multiple devices through a router to
7 one single IP address, correct?

8 A Correct, based on what you showed me from their
9 website.

10 Q Okay. So you would agree with me, with regard to the
11 clerical error that you made on Counts 9, 10, and 11, that
12 there's no possible way that March 3rd, 2016, the offenses or
13 the images could have been found on the Acer laptop? Correct?

14 A Correct. That was a clerical error, yes.

15 Q Okay. And so when you filed the application for
16 charges back in November 2nd, 2016, you didn't pick up on that
17 clerical mistake?

18 A No, ma'am.

19 Q And when the State filed its criminal information,
20 outlining the 11 counts, on December 2nd, 2016, you didn't
21 notify her that the dates were incorrect, correct?

22 A Ma'am, I didn't pick up on that date.

23 Q Okay. And at what point did you pick up on that date
24 that that date was wrong?

25 A I can't tell you -- I can't give you a definitive

1 time. I mean, that was clearly my fault, and I can't tell you
2 when I picked up on that, but --

3 Q Was it months ago, weeks ago, days ago?

4 A No, it very well could have been a month ago.

5 Q A month ago?

6 A Very well could have been, ma'am. I, I can't give
7 you a specific time frame of when I became aware of it, but
8 nevertheless --

9 Q Okay. So as soon as you became aware of the fact
10 that the three counts 9, 10, and 11, the date of the offense
11 cannot possibly be March 3rd, 2016, when did you find out and
12 when did you tell Ms. King?

13 A Ma'am, I don't recall.

14 MS. CHOI: Your Honor, if I may approach?

15 THE COURT: (No audible response.)

16 MS. KING: Approach the bench?

17 MS. CHOI: Yes.

18 (Bench conference follows:)

19 MS. CHOI: Your Honor, as you know, when we did the
20 pretrial motions and we did the motion to amend, Ms. King did
21 proffer that after she came back from maternity leave, that she
22 identified that the dates were incorrect and that it was a
23 clerical error, that in her good-faith effort, she changed
24 that, and I absolutely believe that to be true. However, based
25 on this testimony, what's actually true is that he is the one

1 who found out the date, doesn't know when he did it, doesn't
2 know when he told her but that it had to be fixed.

3 I believe that having amended the dates unduly
4 violates Mr. Mallik's right to notice. It is unfair surprise,
5 and I would renew my objection with regard to that and ask that
6 Your Honor reconsider that decision based on the testimony
7 provided by this officer. He has no idea when he did any of
8 this stuff.

9 THE COURT: Did what?

10 MS. CHOI: He has no idea what he did and when he did
11 it and that I don't think that there's good cause in any way or
12 a good-faith effort on his part to correct a clerical mistake
13 that had an incredible bearing on Mr. Mallik's life. I would
14 ask that those three counts be reconsidered and we would just
15 pursue on the other eight.

16 MS. KING: Your Honor, it's highly -- Your Honor
17 already ruled on amending the counts. We're in trial.
18 Jeopardy has attached. It's highly, you know, it's not proper
19 to try to renew this during, during trial, and the testimony
20 was that it was a clerical error. Your Honor already found
21 that it was in good faith, that we provided notice before trial
22 started --

23 MS. CHOI: But --

24 MS. KING: -- and we already proceeded on the
25 amended -- we're already in trial on the, on the amended

1 counts.

2 MS. CHOI: But I also asked Your Honor to please
3 reserve on the fact, and we did that, that you would reconsider
4 that once you heard some testimony from the witnesses, the
5 State's witnesses, and that's why I'm renewing, because you
6 said you can renew your objection at that time again and we can
7 revisit it. That's what we did yesterday, Your Honor, and
8 that's why I'm doing this.

9 THE COURT: Or the Court could grant a motion for
10 judgment of acquittal --

11 MS. CHOI: Okay. I could do that too.

12 THE COURT: -- at the, at the end of the State's
13 case.

14 MS. CHOI: I could do that too, but I would prefer
15 that Your Honor reconsider.

16 THE COURT: Let me think about that.

17 MS. CHOI: Okay.

18 THE COURT: Let me think about that.

19 MS. CHOI: I'd appreciate it.

20 THE COURT: Now, do you have more for this witness?

21 MS. CHOI: I do have a little bit more. Do we need
22 to take a break? I sort of need a break.

23 THE COURT: Well, I'm thinking about recessing for
24 lunch.

25 MS. CHOI: Okay. Could we take a break? That would

1 Q -- concerning Mr. Abe Mallik?

2 A Except on the Acer.

3 Q On the Acer? Okay.

4 A Yes.

5 MS. CHOI: Okay. That's all I have, Your Honor.

6 MS. KING: Just very brief.

7 REDIRECT EXAMINATION

8 BY MS. KING:

9 Q Is there -- reviewing the folder structure, the
10 nature of the images that you found, is there anything
11 unusual -- is that consistent with your investigation of child
12 pornography?

13 A Yeah. The folder structure? Yes. We typically see
14 a lot of times where they name folders.

15 Q And is it, and you stated -- is it uncommon for child
16 pornography just to be found on one of a defendant's device?

17 A No, it's not uncommon.

18 MS. KING: No further questions.

19 THE COURT: I have a question.

20 THE WITNESS: Sure.

21 THE COURT: It's my understanding that, for instance,
22 the iPad, that with a court order, you can send that iPad to
23 Apple and they would be able to access the information.

24 THE WITNESS: That would take months and months, Your
25 Honor.

1 THE COURT: I'm aware of that.

2 THE WITNESS: But there is -- and then also the cost
3 incurred on the taxpayers. So that was why, if we could wait
4 until next month -- Homeland Security has a contract with
5 Cellebrite for advanced techniques and stuff, but that was not
6 coming out until past this court date. So we were kind of
7 stuck. I tried everything. I was provided with a sheet of
8 passwords, very meticulous, and when the passwords did not
9 work, I tried other passwords that were very similar to the
10 ones between his user accounts, didn't get it. I was hoping I
11 would get lucky but didn't happen.

12 THE COURT: Any questions in light of the Court's
13 question?

14 MS. KING: No, Your Honor.

15 MS. CHOI: I do have one follow-up.

16 RECROSS EXAMINATION

17 BY MS. CHOI:

18 Q With regard to the password, that extensive list, was
19 that unusual in this particular situation?

20 A I found it unusual that he had such a -- because I
21 typically don't see meticulously kept lists --

22 Q Yes.

23 A -- that --

24 Q So out of the --

25 A -- he couldn't, that he couldn't remember his

AV

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

STATE OF MARYLAND,

Criminal No. 16-059271

vs.

ABE ARJUN MALLIK,

Defendant.

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AFFIDAVIT OF ALECIA FRISBY TROUT

1. I, ALECIA FRISBY TROUT, am over the age of 18, and competent to testify to the matters herein, which are all based on my personal and first-hand knowledge.
2. I am an adult citizen of the United States, residing in Frederick County, Maryland.
3. I was in the jury pool in the above captioned case on May 30, 2017.
4. As a fellow attorney, I felt compelled to contact the defendant's attorney, Ms. Sun E. Choi, with regard to an issue that occurred concerning the jury pool from which the defendant's jury was selected.
5. I have never met the defendant and/or Ms. Choi, and I do not know them.
6. I sent Ms. Choi the following message on May 31, 2017, the day after the incident

occurred. I wrote the following:

"This message is for Ms. Choi in regards to the Mallik trial. Yesterday, I was on the jury panel for the case, but my number was too high so I was not addressed prior to a jury being selected. As an attorney, I feel obligated to share with you something that happened that I fear may have influenced the jury. I think you can set it straight before deliberation if you think it is a problem.

Yesterday morning, Judge Nicklas came in to address the prospective jurors. He thanked us for our service and apologized that so many of us had to be called. He said a 3-day felony trial was set in his court room but the defendant had not shown up so the case was not going forward. He referred to how Frederick was going to have to go and get the defendant. There was chatter all day amongst the

jurors about how this defendant had fled and how they hoped he wouldn't be caught prior to the end of our jury service because no one wanted to sit on a three-day trial. Then, when we got called up for your trial, and the Judge said it would be a 3-day trial, there was a lot of chatter that this was the case Nicklas had been talking about. I would put money on the fact that most jurors believe that to be true. Therefore, they think that your client fled and had to be captured and brought to trial. Obviously, if that is not true, it needs to be straightened out.

7. Ms. Choi responded to this message thanking me for stepping forward.

AFFIRMATION

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING STATEMENTS CONTAINED IN THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Aug 2, 2017
Date

Aledia Frisby Trout
Aledia Frisby Trout
Phone Number: 240-405-5019
Email Address: afrisby@mdlab.org

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

AV

STATE OF MARYLAND

*

Criminal No. 16-059271

*

vs.

*

*

ABE-ARJUN MALLIK,

*

*

Defendant.

*

AFFIDAVIT OF SUN E CHOI

1. I, SUN E CHOI, am over the age of 21 and competent to testify to the matters herein, which are all based on my personal and first-hand knowledge.
2. I am an adult citizen of the United States, residing in Montgomery County, Maryland.
3. I am the defense counsel in the above captioned case.
4. That on June 2, 2017 at the conclusion of the three day trial and verdict regarding the above-referenced matter, I was approached by one of the members of the Jury.
5. That this juror voluntarily shared the deliberative process with me.
6. That this juror was concerned as were several members of the Jury that the iPad was not examined.
7. That according to the juror, the Jury believed the 'missing' eight images were indeed on the iPad.
8. That the Jury members did return to court on June 2, 2017 and asked the Court if they could plug in and examine the iPad.
9. It is my testament that the State should have waited a month to examine the iPad which was central to its case.
10. That the Defendant did not receive a fair trial because the State did not complete their examination of the iPad before proceeding to trial.

AFFIRMATION

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY
THAT THE FOREGOING STATEMENTS CONTAINED IN THIE AFFIDAVIT ARE TRUE
AND CORRECT TO THE BEST OF MY KNOWLEDGE.

12/22/2017

Date



Sun E. Choi, Esquire
7820 B Wormans Mill Road, # 154
Frederick, Maryland 21701
202-630-9529 (Office)
301-500-3135 (Fax)
schoi@dcmetrolaw.net
Attorney for Defendant

AV

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

STATE OF MARYLAND

*

*

Criminal No. 16-059271

vs.

*

*

ABE-ARJUN MALLIK,

*

*

Defendant.

*

DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE

COMES NOW, the defendant, ABE-ARJUN MALLIK, by and through his attorneys, Sun E. Choi, Esquire and DC Metro Law, L.L.C., and pursuant to Maryland Rule 4-345, respectfully requests that this Honorable Court modify the sentence imposed against the defendant. As grounds, the defendant represents to this Honorable Court as follows:

1. That on October 3, 2017, Defendant appeared before the Honorable Michael M. Galloway for sentencing in the above captioned matter.
2. That the Defendant was charged with eleven (11) counts of "Possess Child Pornography".
3. That this Honorable Court imposed a sentence of 10 years incarceration, suspending all but time served of 5 days, with 5 years of supervised probation.
4. That Defendant is requesting that this Honorable Court modify the sentence imposed.

5. That at sentencing, Defendant submitted the attached Sentencing Memorandum, which is referenced here as if fully set forth herein. Please see the attached Exhibit A - Sentencing Memorandum and Exhibits.
6. That all the documents in addition to the reasons set forth in this motion support the defendant's request for modifying the sentence imposed.
7. That Defendant is requesting that this Honorable Court consider granting him a Probation Before Judgment pursuant to MD Code, Criminal Procedure, § 6-220.
8. That Defendant is requesting that this Honorable Court consider modifying his probation from supervised to unsupervised.
9. That Defendant is requesting that this Honorable Court modify the condition concerning his daughter Nikita. Specifically, Defendant is requesting that this Honorable Court modify the condition to, no unsupervised contact with any minors except for his daughter, of which he is to have no abusive or harassing contact with.
10. That Defendant is doing very well with probation and complying with everything that his agent is requesting of him, in addition to what this Honorable Court ordered.
11. That Defendant has been complying with the condition to receive treatment related to this matter. And that the counselors are allowing Defendant to attend multiple group sessions per week in order for Defendant to finish his therapy much sooner than expected. Defendant is currently attending three sessions per week, which is an extraordinary accommodation made by the counselors to assist

Defendant. Upon the successful completion of therapy, Defendant will file a supplement to this motion.

12. That the defendant is currently involved in a divorce and custody matter. Please see the attached Exhibit B - Custody Matter.

13. That Defendant is seeking sole custody of his daughter Nikita due to his spouses mistreatment of her. Please see the attached Exhibit C - Letter from Nikita.

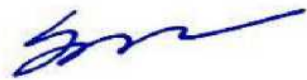
14. That Defendant is requesting that this Honorable Court hold this motion in abeyance until such time the defendant requests a hearing on this matter.

WHEREFORE, the Defendant prays that this Honorable Court:

- A. GRANT Defendant's Motion for Modification of Sentence;
- B. GRANT Defendant's request to hold this motion in abeyance, until such time the defendant requests a hearing;
- C. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

DC METRO LAW, L.L.C.



By:

SUN E. CHOI, ESQUIRE
7820 B Wormans Mill Road, Suite 154
Frederick, Maryland 21701
(202) 630-9529 Office
(301) 500-3135 Fax
schoi@dcmetrolaw.net
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 2, 2017, a copy of the Motion for Modification of Sentence and Proposed Order was served via electronic mail to:

Office of the State's Attorney
Circuit Court Division
Frederick, Maryland 21701
Fredericksaocircuit@frederickcountymd.gov



Sun E. Choi, Esquire

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

STATE OF MARYLAND

vs.

ABE-ARJUN MALLIK,

Defendant.

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Criminal No. 16-059271

ORDER

Upon consideration of the Defendant's Motion for Modification of Sentence, and any response thereto it is this _____ day of _____, 2018, hereby,

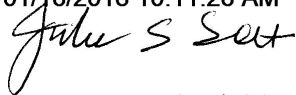
ORDERED, that Defendant's Motion for Modification is hereby GRANTED, and it is further hereby

ORDERED, that Defendant's Motion for Modification is hereby held in abeyance until such time Defendant requests a hearing.

SO ORDERED

DENIED

01/16/2018 10:11:26 AM



Julie S. Solt, Administrative Judge

Circuit Court for Frederick County, Maryland

Entered: Clerk, Circuit Court for
Frederick County, MD
January 16, 2018